IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. 832
CHAMBER THREE
AWARD NO. 580-832-3

VIVIAN MAI TAVAKOLI,
JAMSHID DAVID TAVAKOLI,
KEYVAN ANTHONY TAVAKOLI,
Claimants,

and

THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,
Respondent.

AWARD

Appearances

For the Claimants:	Mr. John L. Boos, Attorney for the Claimants; Dr. Ala T. Kiaie, Mr. Hossein Tavakoli, Mrs. Bettie Tavakoli, Witnesses; Ms. Vivian M. Tavakoli, Mr. Jamshid David Tavakoli, Mr. Keyvan Anthony Tavakoli, Party Witnesses; Mr. Paul Regan, Expert Witness;
For the Respondent:	Mr. Ali H. Nobari Agent of the Islamic Republic of Iran; Mr. Nozar Dabiran, Professor Brigitte Stern, Legal Advisers to the Agent; Mr. Behrouz Salehpour, Legal Assistant to the Agent; Mr. Mohammad Rangchian, Attorney for Western Industrial Group; Mr. Ali Reza Arbabi, Representative of Western Industrial Group; Mr. Seyed Ghansoor Mousavi, Financial Representative of Western Industrial Group; Mr. Majid Fatehi, Expert Witness;
Also Present:	Mr. D. Stephen Mathias, Agent of the United States of America; Ms. Mary Catherine Malin, Deputy Agent of the United States of America.

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I. INTRODUCTION

1. VIVIAN MAI TAVAKOLI, JAMSHID DAVID TAVAKOLI and KEYVAN ANTHONY TAVAKOLI, siblings who allegedly have dual Iranian-United States nationality (collectively, the "Claimants"), bring this claim against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN (the "Respondent"). They contend that the Respondent expropriated their interests in Western Industrial Group ("WIG"), a company incorporated in Iran for the purpose of developing an industrial city near Kermanshah. According to the Claimants, the Respondent appointed successive managers and directors to govern WIG, thereby depriving the Claimants of their rights as shareholders. The Claimants seek U.S.$3,830,585 in compensation, together with interest from the date of the alleged expropriation.[1]

2. The Respondent denies that the Tribunal has jurisdiction over the claim, asserting that the Claimants were not dominant and effective United States nationals at the relevant time. The Respondent also denies that the Claimants owned all of the shares in respect of which they claim; that the shares were expropriated; and that the shares had any positive value.

II. PROCEDURAL HISTORY

3. The Claimants filed their Statement of Claim on 19 January 1982. On 10 July 1982 the Claimants requested that this Case be "treated simultaneously" with Case No. 164 (Kiaie), a case that also concerned claims arising from the alleged expropriation by the Respondent of property interests in WIG. On 2 August 1982 the President of the Tribunal reassigned the present Case to Chamber Three, the Chamber to which Case No. 164 (Kiaie) already had been assigned.

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[1] Vivian Mai Tavakoli originally also claimed that the Respondent had expropriated her rights as a shareholder in a second Iranian corporation, Western Publishing and Printing Company (the "Printing Company"). However, at the Hearing she withdrew this claim.

4. On 27 August 1985 the Claimants requested that their mother, Bettie Tavakoli, be included as a claimant and that the original Claimants, Vivian, Jamshid David and Keyvan Anthony Tavakoli, be registered as her "Beneficiaries." The Respondent submitted comments on 31 January 1986 objecting to the requested correction, and further submissions were subsequently received from both Parties. In an Order of 30 April 1987 the Tribunal noted that in the Statement of Claim the Claimants are Vivian Mai Tavakoli, Jamshid David Tavakoli and Keyvan Anthony Tavakoli and the Claim is alleged to concern 960 shares in WIG purchased by the Claimants' father, Hossein Tavakoli, in 1973. The Tribunal noted also that in their request for correction of the Claim the Claimants not only seek to include Bettie Tavakoli as a claimant, but also allege that the Respondent expropriated 1500 shares in WIG purchased by Bettie Tavakoli and her children in 1974. The Tribunal stated that

> The Request . . . seeks to add as a Claimant a person who was not mentioned in the Statement of Claim. While such an amendment may be possible under Article 20 of the Tribunal Rules, the Tribunal finds that the Claimants have not provided sufficient and consistent information concerning the ownership of the claimed shares and that consequently the Request can be read as an attempt to add a claim by a new Claimant for shares different from those alleged to be owned by the existing Claimants, which might not be a permissible amendment under Article 20 of the Tribunal Rules but rather might be an assertion of a new claim after the deadline contemplated in the Claims Settlement Declaration.

The Tribunal concluded that it did not have enough information to make a decision on the matter and ordered the Claimants to clarify the identity of the persons who are alleged to own the shares to which the Claim relates. On 1 June 1987 the Claimants withdrew their request to include Bettie Tavakoli as a Claimant.

5. On 5 December 1994 the Claimants submitted further documents -- allegedly copies of certificates representing 510 shares of WIG stock -- and requested that they be admitted into evidence. In light of the conclusions that the Tribunal reaches

in this Case (see paras. 48 and 68, infra), it is unnecessary to decide this request.

6. A Hearing in this Case was held concurrently with the Hearing in Case No. 164 (Kiaie) on 8 and 9 December 1994.

7. On 17 April 1996 the Tribunal ordered the Claimant Vivian Tavakoli to submit certain documents in support of allegations she had made in her pleadings. The Tribunal stipulated that "[n]o pleadings, evidence other than that strictly required by the Present Order, or comments other than merely factual indications about the documents are to be submitted by the Claimant with these documents." The Respondent was invited to submit its comments on the Claimant's submission, "such comments to be limited to the conformity of the contents of the submitted documents to the Claimant's allegations."

8. Vivian Tavakoli submitted various documents in response on 17 May 1996 and the Respondent commented thereon on 27 June 1996. In an unauthorized filing of 22 July 1996 Vivian Tavakoli contended that the Respondent's comments went beyond the scope of the Tribunal's Order and responded to some of those comments. On 20 August 1996 the Respondent objected to Vivian Tavakoli's unauthorized filing and took issue with part of its contents.

9. Under the Tribunal Rules the Tribunal has the discretion to accept unauthorized late submissions from the Parties. See Article 15, paragraph 1, and Article 22 of the Tribunal Rules. However, in the interests of the orderly conduct of the proceedings and in order to maintain "equality of arms," it has in general taken a restrictive approach to the exercise of this discretion. See, for example, Dadras International, et al. and Islamic Republic of Iran, et al., Award No. 567-213/215-3, paras. 27-28 (7 Nov. 1995), reprinted in __ Iran-U.S. C.T.R. __, __; Edgar Protiva, et al. and Government of the Islamic Republic of Iran, Award No. 566-316-2, paras. 30-36 (14 July 1995), reprinted in __ Iran-U.S. C.T.R. __, __ ("Protiva"); Reza Said Malek and Government of the Islamic Republic of Iran, Award No. 534-193-3,

para. 12 (11 Aug. 1992), reprinted in 28 Iran-U.S. C.T.R. 246, 249-50; Harris International Telecommunications, Inc. and Islamic Republic of Iran, et al., Award No. 323-409-1 (2 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 31, 45-50. In the present Case, the Tribunal's Order of 17 April 1996 clearly restricted the scope of the submissions to be made by both Parties. In light of these restrictions and in the absence of any other justifying circumstances, the Tribunal excludes from the record items 3, 4 and 6 of the Respondent's submission of 27 June 1996, the Claimant's entire submission of 22 July 1996 and the Respondent's entire submission of 20 August 1996.

III. JURISDICTION

A. Nature of the Claim and the Date the Claim Arose

10. Article II, paragraph 1, of the Claims Settlement Declaration (the "CSD")[2] provides that the Tribunal has jurisdiction over claims which "are outstanding on the date of this Agreement [19 January 1981] . . . and arise out of debts, contracts . . ., expropriations or other measures affecting property rights."

11. The Claimants seek compensation for the deprivation of property rights. Their claim thus falls within the Tribunal's subject matter jurisdiction.

12. In its Award in Jacqueline M. Kiaie, et al. and Government of the Islamic Republic of Iran, Award No. 570-164-3, para. 42 (15 May 1996), reprinted in __ Iran-U.S. C.T.R. __ ("Kiaie"), the Tribunal held that WIG was expropriated by the Respondent on 26 November 1979. As the Parties put forward no

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[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 (19 January 1981), reprinted in 1 Iran-U.S. C.T.R. 9.

grounds for reaching a different conclusion in this Case, the Tribunal determines for jurisdictional purposes that the present claim also arose on that date. Consequently, the claim was outstanding on 19 January 1981 and falls within the Tribunal's temporal jurisdiction.

B. Nationality of the Claimants

13. There is no dispute that the Claimants were Iranian nationals by virtue of being born of an Iranian father. The Tribunal is satisfied that the Claimants additionally acquired United States citizenship by virtue of their birth to an American mother and, in the case of Vivian Mai Tavakoli, by virtue of her birth on American soil. There is no evidence in the record that the Claimants have relinquished or otherwise lost either their United States nationality in accordance with United States law or their Iranian nationality in accordance with Iranian law. Consequently, the Tribunal finds that during the relevant period from 26 November 1979 to 19 January 1981 all three Claimants were nationals of both Iran and the United States.

14. The Tribunal has jurisdiction over claims by dual Iran-United States nationals against Iran provided that "the dominant and effective nationality of the Claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States." Case No. A18, Islamic Republic of Iran and United States of America, Decision No. DEC 32-A18-FT, at 25 (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, 265 ("Case No. A18"). The Tribunal must therefore determine which was the dominant and effective nationality of each of the Claimants during the relevant period.

15. In Case No. A18 the Full Tribunal held that, in determining the dominant and effective nationality of a dual national claimant, the Tribunal is to "consider all factors, including habitual residence, center of interests, family ties, participation in public life and other evidence of attachment." Case No. A18, Decision No. DEC 32-A18-FT, at 25-6 (6 Apr. 1984),

5 Iran-U.S. C.T.R. at 265. In this connection, the Tribunal has specified that "to establish what is the dominant and effective nationality at the date the claim arose, it is necessary to scrutinize the events of the Claimant's life preceding this date. Indeed, the entire life of the Claimant, from birth, and all the factors which, during this span of time, evidence the reality and the sincerity of the choice of national allegiance he claims to have made, are relevant." Reza Said Malek and Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3, at 6 (23 June 1988), reprinted in 19 Iran-U.S. C.T.R. 48, 51.

1. The Claimants' contentions

16. The Claimants' mother, Bettie Tavakoli, née Ballard, was born in Davidson, Tennessee on 10 September 1929. She grew up in the United States and married the Claimants' father, Hossein Tavakoli, an Iranian, in the United States in 1952. It appears that Hossein Tavakoli had spent most of his life until 1952 in Iran. He was in the United States in 1952 to complete a Master of Arts in Education. Upon her marriage, Bettie Tavakoli automatically acquired Iranian nationality under Iranian law. She subsequently obtained an Iranian identity card.

17. On completion of their studies, Bettie and Hossein Tavakoli began teaching in a Tennessee Preparatory School. Bettie Tavakoli gave birth to their first child, Vivian Tavakoli, on 27 September 1957 in Nashville. Iranian identity card Number 242 was issued for Vivian Tavakoli on 30 April 1958 by the Iranian Consulate General at New York. Shortly thereafter, when Vivian Tavakoli was seven months old, the family moved to Iran.

18. In Iran Hossein Tavakoli commenced working for the Ministry of Education as teacher of a High School and Bettie Tavakoli started teaching at the Tehran American School. Two more children, Jamshid David and Keyvan Anthony, were born to the couple in Tehran on 3 February 1962 and 26 February 1963 respectively. Iranian identity cards and U.S. Certificates of Report of Birth were issued for both of them.

19. At the age of 4, Vivian Tavakoli attended a kindergarten in Tehran run by an American. In September 1963, after the family had spent some five years in Iran, Hossein Tavakoli was transferred by his employer, the Government of Iran, to Washington, D.C., to work as the "advisor of the office of supervising Iranian students in counselling and educational affairs and as the representative of [Iran's] Plan Organization in Washington." His family accompanied him. Vivian Tavakoli was six years old at that time and Jamshid David and Keyvan Anthony were infants. Vivian Tavakoli started First Grade in Nashville, and finished it in Washington, D.C.

20. After approximately a year in the United States, the family moved back to Iran, where they remained until 1975. The Claimants allege that Bettie and Hossein Tavakoli always intended to settle permanently in the United States but were distracted from that goal for some time by developments in Hossein Tavakoli's career. Bettie Tavakoli asserts that the United States remained her home and that she was just "away" for a while. Her family lived in Nashville and Florida, and while in Iran she allegedly retained many connections to the United States. Moreover, according to the Claimants, she purchased three houses in Denver, Colorado; two to be rented out and one to be the family's home. In support of this allegation, the Claimants submit a letter from the real estate agent who allegedly acted for Bettie Tavakoli.

21. Consistent with their intention eventually to live in the United States, Bettie and Hossein Tavakoli allegedly agreed that they would raise their children as Americans, wherever the family happened to be living. After returning to Iran in 1964, Vivian Tavakoli initially was enrolled at the Tehran American School. In Eighth Grade, she transferred to an International School in Tehran headed by an American educator. The Claimants contend that Jamshid David and Keyvan Anthony Tavakoli first went to a Tehran nursery school run by an American woman, followed by an American kindergarten in the case of Jamshid David, after which they also attended the Tehran American School. They allege that

the Tehran American School was operated completely as a school in the United States and that only United States citizens were allowed to attend it during the period that they were there. According to the Claimants, they socialized extensively with Americans and experienced many facets of American culture. They allege that they spoke English most of the time and had only a rudimentary knowledge of Farsi.

22. In the period from 1964 to 1975, when the family was living in Iran, they allegedly travelled to the United States for a month most years to see their relatives there. Vivian Tavakoli stated that, when young, she entered and left Iran on her mother's Iranian passport, as she says was required by Iranian law, but otherwise travelled on her mother's United States passport. She was issued a United States passport of her own on 12 November 1971.

23. The Claimants allege that some time between 1973 and 1975 either Bettie Tavakoli or Hossein Tavakoli purchased a significant shareholding in WIG for the benefit of their children. They contend that at least part of the purchase price was raised from the sale of the houses purchased by Bettie Tavakoli in Denver, Colorado, but that Bettie Tavakoli retained real estate in Tennessee.

24. On 28 May 1975 Vivian Tavakoli was issued with a new Iranian passport, Number 1564445. On 8 June 1975, at the age of almost eighteen, she went to the United States with her mother. They spent the summer months with their relatives in Nashville. At the end of the summer Hossein, Jamshid David and Keyvan Anthony Tavakoli allegedly joined them there. The family then took Vivian Tavakoli to Denver and in September 1975 she started attending courses at the University of Denver, where she claims to have been enrolled as a United States national.

25. Bettie, Jamshid David and Keyvan Anthony Tavakoli then returned to Nashville and Hossein Tavakoli returned to Iran. In Nashville Bettie Tavakoli commenced what appears to have been a

Masters in Special Education at Peabody College. Jamshid David and Keyvan Anthony, who were then ages 13 and 12 respectively, were enrolled in school in Nashville for the autumn semester of 1975. Bettie Tavakoli and her two sons returned to Iran at some time in 1976.

26. Vivian Tavakoli renewed her Iranian passport in San Francisco in April 1976 and went to Iran on 25 May 1976 for two and a half months, returning to Denver on 8 August 1976. She alleges that she used her Iranian passport on that visit to Iran only because it was required by Iranian law and that she used her United States passport for most travel after 1976. She did not again return to Iran.

27. In January 1977 Bettie, Jamshid David and Keyvan Anthony Tavakoli went again to the United States and Jamshid David and Keyvan Anthony, aged 15 and 14 respectively, were again enrolled in school there. They remained in the United States from then on except for one or two months which Jamshid David and Keyvan Anthony spent in Iran in the summer of 1977. The Claimants allege that the move by Bettie Tavakoli and her sons to the United States in January 1977 was intended to be a definitive one for the family. At the Hearing, Bettie Tavakoli alleged that, while they had always intended to live eventually in the United States, they decided to move in 1977 in particular because Hossein Tavakoli was nearing retirement, Bettie Tavakoli's mother was ill, and she herself wanted to be nearer to Vivian Tavakoli, who was still studying in Denver.

28. Hossein Tavakoli continued living and working in Iran until his retirement on 22 December 1977. He was then Advisor to the Minister at the Iranian Ministry of Planning and Budget. He went to the United States in 1978, and the family house in Tehran allegedly was sold one, or one and a half, years after his departure.

29. Vivian Tavakoli graduated from the University of Denver with a Bachelor of Arts Degree on 2 June 1979. Upon graduating,

she obtained a job in Denver. On 14 September 1979 she and her parents purchased a residential property in Denver. She married a United States national on 21 June 1980 and she and her husband allegedly moved into a house in Denver that they had purchased. She currently lives in North Carolina.

30. At the beginning of the relevant period both Jamshid David and Keyvan Anthony Tavakoli were still in school in the United States. Their school records indicate that they were successful in school and participated in several extra-curricular activities. Keyvan Anthony Tavakoli was selected for inclusion in the Who's Who in American High School Students Yearbook. Subsequently they attended the University of Tennessee at Knoxville. Both live in the United States.

2. The Respondent's contentions

31. The Respondent alleges that Bettie Tavakoli embraced Iran and Iranian nationality. It contends that she lived as an Iranian citizen in Iran from 1957 until 1976, enjoying the rights of an Iranian citizen. It points out that she sold investments in the United States in order to make a significant and long-term investment in Iran on behalf of her children, and that financial and economic interests are an important element in determining dominant nationality.

32. According to the Respondent, the fact that the Claimants spent the larger part of their lives prior to the date their claim arose, including in particular their formative years, in Iran means that at the beginning of the relevant period they were dominant and effective Iranian nationals. The Respondent emphasizes that the Claimants had an extended family on their father's side, all of whom allegedly lived in Iran. It argues that the children clearly must have experienced Iranian society, language and culture throughout the years of childhood and adolescence which they spent in Iran. It denies that only United States citizens were allowed to attend the Tehran American School and asserts that a large number of Iranian children also attended

the school. It argues that, as the Claimants did not obtain their United States passports until they were older, they could not have relied on these to attend the American School and must therefore have attended the School using their Iranian identity cards.

33. While Vivian Tavakoli obtained a United States passport in 1971, argues the Respondent, she was only fourteen years old at that time. When she came of age at eighteen, she obtained an Iranian passport, which is said to indicate that her mature decision was to prefer Iran. The Respondent points out that, after going to the United States in 1975, she went back to Iran to visit in the summer of 1976. Moreover, the Respondent argues that she considered her stay in the United States "temporary and for the purpose of education." The Respondent points to the facts that on applications for her 1975 Iranian passport she stated her residence to be Tehran, that she travelled on her Iranian passport in 1975 and 1976, and that she extended its validity in 1977. The Respondent argues that, by virtue of her parents' purchase of shares in WIG on her behalf, the center of her financial interests was also in Iran. These factors, assert the Respondent, establish that her dominant nationality at the date her Claim arose was Iranian.

3. The Tribunal's decision

a. Vivian Tavakoli

34. Except for a period of up to a year when she was about 6 years old, Vivian Tavakoli lived in Iran from 1958, when she was 7 months old, until 1975, when she was approximately eighteen years old. She completed her elementary and secondary schooling there.

35. In Iran, Vivian Tavakoli attended first the Tehran American School and then an International School. It is clear that the Tehran American School reflected predominantly American educational and cultural values and that Vivian Tavakoli

experienced these values, regardless of the school's entrance requirements. She is also likely to have experienced American or other Western values at the International School in Tehran. More importantly, she was clearly exposed to the culture of the United States to a significant extent through her mother. Nevertheless, it would be difficult to believe that during the same period she did not also experience strong Iranian influences through living in Iran as an Iranian national with an Iranian father. Indeed, the Claimants' testimony concerning their day to day life in Iran sought to minimize to such an exaggerated degree the extent of their Iranian contacts during their childhood as to carry little credibility.

36. Vivian Tavakoli's connections to Iran during this period were reinforced by the fact that, as the Tribunal finds below (see para. 68, infra), she acquired a financial interest, albeit a passive one, in WIG, an Iranian company.

37. In 1975 Vivian Tavakoli went to the United States to study. During the four years that she spent at university in the United States, she returned to Iran only once, for a holiday in 1976. A period spent studying in the United States is generally insufficient of itself to render a mature person a dominant and effective United States national, even where that person has experienced extensive American influences during his or her childhood. However, such study remains a relevant factor and may also provide the opportunity for the person to establish the sort of connections to the United States that would qualify him or her as a dominant and effective United States national. See Ardavan Peter Samrad, et al. and Government of the Islamic Republic of Iran, Award No. 505-461, 462, 463, 464 & 465-2, para. 33 (4 Feb. 1991), reprinted in 26 Iran-U.S. C.T.R. 44, 55 ("Samrad"); Shahin Shaine Ebrahimi, et al. and Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 71-44/45/46/47-3 (16 June

1989), reprinted in 22 Iran-U.S. C.T.R. 138.[3] It is therefore necessary to examine what connections Vivian Tavakoli established while in the United States.

38. When Vivian Tavakoli commenced her studies, her family was based in Iran. In early 1977 her mother and two brothers moved to Tennessee and in 1978 her father followed. The fact that the family did not sell their home in Tehran until some time after Hossein Tavakoli's departure to the United States in 1978 does not establish that the move was intended only to be temporary; the date of sale may have been dictated by practical concerns. The Tribunal does consider credible, on the other hand, Bettie Tavakoli's explanation that the family had decided to move to the United States at that stage because Hossein Tavakoli was nearing the end of his career, that her mother in the United States was ill, and that she wanted to be nearer to her daughter. The family then remained in the United States. Therefore, from at least 1978 the center of Vivian Tavakoli's family life had clearly become the United States.

39. Vivian Tavakoli completed her studies in June 1979, some five months prior to the date her Claim arose. After her graduation she remained in the United States, even though her academic reason for being there had ceased. She obtained a job in Denver and, with her parents, purchased a house there. Shortly after the beginning of the relevant period she married a United States national. While the marriage itself occurred after the beginning of the relevant period, its occurrence is evidence that prior to the date of the marriage she had taken a

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[3] In Samrad the claimant Ardavan Peter Samrad studied for three years in the United States prior to the date his claim arose. However, he submitted no evidence to the Tribunal concerning his connections to, or integration into, the United States during that time. The Tribunal concluded that, while it was theoretically possible for such a person to have become a dominant and effective United States national, Ardavan Peter Samrad had failed to provide sufficient evidence to persuade the Tribunal that this was so in his case. Samrad, Award No. 505-461, 462, 463, 464 & 465-2, paras. 32-33 (4 Feb. 1991), 26 Iran-U.S. C.T.R. at 54-55.

significant step towards integration into United States society. These circumstances, taken together, constitute significant links to the United States. Moreover, they suggest that Vivian Tavakoli had formed the intention of remaining there permanently.

40. Vivian Tavakoli's situation is closely comparable to that of Zaman Azar Nourafchan, whom the Tribunal has previously found to be dominantly of United States nationality. See Zaman Azar Nourafchan, et al., and Islamic Republic of Iran, Award No. ITL 75-412/415-3 (15 Dec. 1989), reprinted in 23 Iran-U.S. C.T.R. 307. Indeed, Vivian Tavakoli had even stronger connections to the United States than Zaman Azar Nourafchan: the latter was born of solely Iranian parents and attended Iranian schools whereas Vivian Tavakoli had an American mother and had received an American and international education even during the period she lived in Iran.

41. In light of these considerations, the Tribunal finds that the elements pointing to the dominance of Vivian Tavakoli's United States nationality by the date her Claim arose outweigh those pointing the other way. The Tribunal therefore concludes that by 26 November 1979 Vivian Tavakoli was of dominant and effective United States nationality and that she remained so throughout the relevant period. The Tribunal consequently has jurisdiction over her claim.

b. Jamshid David and Keyvan Anthony Tavakoli

42. Given the similarity of Jamshid David and Keyvan Anthony's respective situations, this Award will deal with them together. Jamshid David and Keyvan Anthony Tavakoli were born in Tehran on 3 February 1962 and 26 February 1963 respectively. Apart from some short stays in the United States, they lived in Iran until they were 15 and 14 years old, respectively. They completed the larger part of their schooling in Iran.

43. In Iran they attended the Tehran American School. Jamshid David and Keyvan Anthony clearly experienced American

values through the Tehran American School, as well as through their mother. Nevertheless, as with Vivian Tavakoli, it is probable that during the same period, they also experienced even stronger Iranian influences through living in Iran as Iranian nationals with their Iranian father. As noted above (see para. 35, supra), the Claimants' testimony on these matters was selective and on the whole carried little credibility.

44. In addition, through their parents Jamshid David and Keyvan Anthony acquired a financial interest, albeit a passive one, in WIG, an Iranian company, rendering Iran the center of their financial interests.

45. Jamshid David and Keyvan Anthony went to the United States with their mother in January 1977, attending secondary schools in Nashville. In the summer of 1977 they returned to Iran to visit their father before returning to school in the United States. By 26 November 1979 they had been living in the United States for only approximately two and a half years, a substantially shorter period of time than Vivian Tavakoli.

46. In 1978 their father joined them in the United States. As a result, the two boys remained under the close influence, not only of their mother, but also of their Iranian father for much of the time that they spent in the United States. Moreover, unlike Vivian Tavakoli they were too young to be likely to have had much opportunity independently to integrate into United States society. There is no evidence that they developed any particular connection to the United States during this period other than their schooling and the presence of their family, nor is there any indication that they formed any other connections soon thereafter.

47. The Tribunal has previously found claimants in comparable situations not to be dominant and effective United States nationals. See Betty Laura Monemi, et al. and Islamic Republic of Iran, Partial Award 533-274-1, para. 31 (1 July 1992), reprinted in 28 Iran-U.S. C.T.R. 232, 242-43; Joan Ward

Malekzadeh, et al. and Islamic Republic of Iran, Partial Award No. 543-356-1, para. 29 (21 Jan. 1993), reprinted in __ Iran-U.S. C.T.R. ___, ___.

48. In light of the above considerations, the Tribunal concludes that Jamshid David Tavakoli and Keyvan Anthony Tavakoli have not provided sufficient evidence to establish that by 26 November 1979 their connections with, and integration into, the United States outweighed the ties to Iran that they had developed living there for most of their childhood. Consequently, the Tribunal does not have jurisdiction over their claims.

49. In light of the fact that the Tribunal has jurisdiction only over the claim of Vivian Tavakoli, the Tribunal will proceed to treat this Case as though it has been brought solely by Vivian Tavakoli, who will henceforth be referred to as the "Claimant."

IV. OWNERSHIP

A. Facts and Contentions

50. WIG was established on 17 June 1974. In her initial pleading, the Claimant alleges that in 1973 her father, Hossein Tavakoli, purchased 320 shares in WIG for each of his three children, 960 shares in total. She contends that "[t]heir names as owners of stocks were sent to The Office of Registration of Companies and Industrial Properties in Tehran along with the minutes of the General Meeting of . . . WIG, and was registered under No. 19025." Those Minutes are not in the record.

51. The Claimant's representative subsequently indicated that, as the Claimant does not have access to important papers in the archives of WIG, it might be necessary to correct the claim as information comes to light. Pursuant to this, the Claimant then altered her initial allegations to contend that Bettie (rather than Hossein) Tavakoli purchased 1,500 (rather than 960) shares from a Mr. Salehinia, one of the original

shareholders in WIG, in 1975 (rather than 1973). In support, she submits a letter from Mr. Salehinia to Dr. Ala Kiaie dated 5 July 1982 in which Mr. Salehinia states that, with the approval of WIG's Board, he sold all his 1500 WIG shares to Bettie Tavakoli, such transfer being "completed in 1975." He states that he then resigned from the company and thenceforth held no more shares in WIG and had nothing further to do with it. The Claimant also submits a "Testimonial" by Hossein Tavakoli, Dr. Kiaie and Mr. Miraftab, another Company official, dated 5 July 1982, to the effect that Bettie Tavakoli and Mrs. Julia Kiaie together owned more than 50% of WIG "from the time of purchase of the stocks in 1975 and 1978."

52. The Claimant alleged that "[t]he purchased shares were registered in the names of [Vivian, Jamshid David and Keyvan Anthony Tavakoli], who were, and are, the legal owners of the shares." In support, she refers to a Report on WIG prepared by the Audit Institution of the Iranian National Industrial Organization and Plan Organization dated 31 December 1981 (the "1981 Audit Institution report") and the Minutes of the 1976 WIG Annual General Meeting. Those documents record that the following people, inter alia, signed the 1976 Minutes:

- Hossein Tavakoli, in respect of 510 shares "as attorney" for Vivian and as guardian of Keyvan Anthony and Jamshid David Tavakoli;

- Mr. Salehinia, in respect of 510 shares in his own name; and

- a Mr. Ali Sheikh, in respect of 480 shares "as guardian of Miss Ladan & Mr. Nader Sheikh."

53. These documents indicate that the Claimant and her brothers together owned an aggregate of 510 shares. In contending that the documents substantiate her claim that together they owned a total of 1500 shares, the Claimant asserts that the sale from Mr. Salehinia is proven by his 1982 letter;

she then counts the 510 shares registered in his name as belonging to them. She further contends that she and her brothers own the 480 shares recorded as being held by Mr. Sheikh's children. She asserts that Mr. Sheikh "had temporary possession of 480 shares from Mr. Salehinia; later, Mr. Ali Sheikh failed to pay for the shares, after which they reverted to Mr. Salehinia, who sold them to the Tavakolis."

54. After the Respondent submitted evidence that Mr. Sheikh did in fact pay for the shares recorded in his children's names, the Claimant withdrew her claim for a portion of those shares. She thus claims that she and her brothers own only 1020 shares in WIG.

55. The Claimant contends that Bettie Tavakoli arranged for the payment of 14,000,000 Rials, the equivalent of approximately U.S.$200,000, from Tavakoli family savings in the United States. Bettie Tavakoli stated that it was difficult to get U.S. dollars into Iran at the time and that she did not know how it was done because she had left it up to her husband. Hossein Tavakoli alleged that he gathered the money and personally conveyed it to Mr. Salehinia in cash in Rials. Bettie Tavakoli stated that she has no documentation evidencing the payment.

56. The Respondent denies that the Claimant is the proper owner of any shares in WIG at all. The Respondent questions the Claimant's assertions that Mr. Salehinia transferred 1,500 shares in WIG to the Tavakolis in 1975. It asserts that, apart from Mr. Salehinia's 1982 letter, there is no documentary evidence of this transfer. It contends that Mr. Salehinia's 1982 letter is an "utter lie." The Respondent points out that the contents of Mr. Salehinia's letter, according to which Mr. Salehinia sold 1500 shares to Bettie Tavakoli in 1975 and then withdrew from the Company altogether, are inconsistent with other allegations or items of evidence already in the record. It submits a 1992 affidavit by Mr. Salehinia in which he indicates that his 1982 letter "was signed by me in unusual circumstances, unfavorable mental conditions and unnatural state of mind . . . while I was

in hospital" and should be "vitiated." He states that he never sold any shares in WIG to the Tavakolis, purchased shares from them or acted on their behalf in WIG.

57. The Respondent further contends that, even if there was an attempt to transfer shares to the Claimant, title was not conveyed. Article 40 of the Iranian Commercial Code, as amended in 1969, requires that, for a transfer to have legal effect, it must be entered in the company's share register and signed by the transferor or his legal representative. It asserts that in at least two Awards the Tribunal has stated that it will not recognize a transfer of Iranian shares that does not comply with Article 40. See Roy P.M. Carlson and Government of the Islamic Republic of Iran, et al., Award No. 509-248-1, para. 40 (1 May 1991), reprinted in 26 Iran-U.S. C.T.R. 193, 210-11 ("Carlson"); Ian L. McHarg, et al. and Islamic Republic of Iran, Award No. 282-10853/10854/10855/10856-1, at 21 (17 Dec. 1986), reprinted in 13 Iran-U.S. C.T.R. 286, 302 ("McHarg"). The 1981 Audit Institution report stated that WIG's share register had not been kept up to date and instead relied on the Minutes of the 1976 Annual General Meeting of WIG in ascertaining who were the shareholders. The Respondent infers that the Claimant's interest was not included in the share register.

58. The Claimant points out that the Respondent has failed to produce WIG's share register to substantiate its allegations. She contends that two items of evidence show that the Respondent had access to the share register: the 1981 Audit Institution report, which indicates that the share register was available to it; and a 1992 affidavit by a Mr. Khosrawi Pour, submitted by the Respondent, in which Mr. Khosrawi Pour states that he has consulted the register.

59. The Claimant also contends that Mr. Salehinia's recantation should not be given credit. She submits affidavits by witnesses who assert that Mr. Salehinia was not in hospital when he signed the 1982 letter. She further asserts that the fact that she is mentioned in the Audit Institution's report as

owning shares establishes that Mr. Salehinia did sell shares to the Tavakolis.

60. Nevertheless, the Claimant appears to concede that she and her brothers may not have become the registered owners of those 510 shares listed in Mr. Salehinia's name (in contrast to the 510 shares listed in the names of the Tavakolis). She contends that the Tavakolis in fact allowed Mr. Salehinia to retain these shares in his name until 1975 so that he could remain a director of WIG, and that after that date he left the Company and was to have arranged for the shares to be officially transferred to the Tavakolis. However, she subsequently alleges that, as the Tavakolis were in the United States from 1976 or 1977, they relied on Mr. Salehinia "as a stand-in and trustee of sorts." In a 1993 affidavit, Dr. Kiaie alleges that Mr. Salehinia in fact never invested his own money in WIG but rather acted as the representative of the Tavakolis, not just from 1975, but from the establishment of WIG in 1974. Therefore, the Claimant asserts, even if she and her brothers were not the listed owners of those shares, they were the beneficial owners and beneficial owners have standing before the Tribunal. See James M. Saghi, et al. and Islamic Republic of Iran, Award No. 544-298-2 (22 Jan. 1993), reprinted in __ Iran-U.S. C.T.R. __ ("Saghi").

61. The Respondent contends that Mr. Salehinia acted neither as vendor nor as trustee of WIG shares for the Tavakolis and submits another affidavit by Mr. Salehinia. In that affidavit Mr. Salehinia denies that he was the representative of the Claimant and reiterates that he never sold shares in WIG to the Tavakolis.

62. At the Hearing the Claimant stated that the Tavakolis bought the shares in 1975 from Mr. Salehinia, who owned or had the rights to them before that, and that she does not contend that Mr. Salehinia acted as trustee for them in any formal sense.

63. At the Hearing, the Respondent asserted that the true owner of the shares registered in the Claimant's name was her father, Hossein Tavakoli. The Respondent suggested that the shares were only registered in the Claimant's name because Hossein Tavakoli, as a government employee, was prohibited from owning shares in a company which did business with the Government. Although the Respondent did not submit any evidence to support its suggestion that such a law or policy existed, Dr. Kiaie stated at the Hearing, in a different context, that "[t]here was a regulation which prevented some level of the government to not have any shares in a private enterprises" [sic].

B. The Tribunal's Decision

64. The Claimant alleges that she held interests in (1) a portion of the 510 shares listed in the Tavakolis' names in the WIG General Meeting Minutes and (2) a portion of a further 510 shares listed in Mr. Salehinia's name in the same Minutes. The 1981 Audit Institution Report indicates that in 1981 the 16 May 1976 Minutes of the General Meeting of WIG were the latest available records relevant to ownership. Those Minutes record that Hossein Tavakoli signed the minutes "as attorney for Miss Vivian, and as guardian of Messrs [Anthony] Tavakoli and David Tavakoli" in respect of 510 shares. In addition, in Kiaie the Respondent submitted a "List of shareholders of Western Industrial Group . . . who attended the Annual Ordinary General Meeting of 20 July 1975." Vivian Tavakoli is included on that list as the owner of 170 shares in WIG. There is thus strong evidence to indicate that Vivian Tavakoli had an interest in at least 170 shares in WIG.

65. A person becomes the legal owner of shares in an Iranian company only when the transfer of shares to that person is entered in the share register and signed. There is no direct evidence that the Claimant's name was entered on WIG's share register. Indeed, the 1981 Audit Institution report stated that the shareholders' register had not been kept up to date and

relied instead on the Minutes of the 1976 WIG General Meeting for information on ownership. The Respondent contends that this establishes that the Claimant's interest embodied in those Minutes was not recorded in the share register and that mere mention in the Minutes is insufficient to convey legal title.

66. As evidenced by the 1975 List of Shareholders, the Claimant already had an interest in WIG by 1975. Although the record indicates that by 16 May 1976 the WIG share register was not kept up to date, neither the 1981 Audit Institution report nor any other evidence indicates whether it already had fallen into disuse by the time the Claimant acquired her interest. The Respondent was clearly in a position to clarify this point and prove its assertions by submitting WIG's share register to the Tribunal. Its failure to do so brings into question the plausibility of its contentions. See Reza Nemazee and Government of the Islamic Republic of Iran, Award No. 575-4-3, para. 62 (10 Dec. 1996), reprinted in __ Iran-U.S. C.T.R. __, __ ("Nemazee"); Kiaie, Award No. 570-164-3, para. 109 (15 May 1996), __ Iran-U.S. C.T.R. at __; Protiva, Award No. 566-316-2, para. 68 (14 July 1995), __ Iran-U.S. C.T.R. at __; Harold Birnbaum and Islamic Republic of Iran, Award No. 549-967-2, paras. 80, 106, 115, 124, 139 (6 July 1993), reprinted in __ Iran-U.S. C.T.R. at __, __, __, __, __, __ ("Birnbaum"); Benjamin R. Isaiah and Bank Mellat, Award No. 35-219-2, at 12-13 (30 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 232, 238; RayGo Wagner Equipment Co. and Star Line Iran Co., Award No. 20-17-3, at 6 (15 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 411, 413. Given the strong evidence that the Claimant had an interest in 170 shares in WIG and the Respondent's failure to submit WIG's share register, the Tribunal concludes that the Claimant was the legal owner of 170 shares in WIG (representing 2.83% of the share capital).

67. The Respondent argues further that the Claimant's father was in fact the true beneficial owner of any shares that might have been registered in her name. The Respondent asserts that Hossein Tavakoli, who was the only member of the family actually involved in WIG's operations, was prevented from owning shares

in his own name because of a law or Government policy preventing Government employees from holding shares in companies doing business with the Government.

68. While the evidence on this point is incomplete, it appears that some such regulation or policy did exist (see para. 63, supra). However, even if it applied to Hossein Tavakoli, which has not been proven, of itself this would not show that Hossein Tavakoli was the beneficial owner of the shares registered in the Claimant's name. While the regulation or policy referred to by the Respondent would constitute a possible motive for entering into such an arrangement, it is not evidence that such an arrangement existed. The Tribunal has generally demanded particularly persuasive evidence to conclude that the registered owner of shares was not their beneficial owner. See Nemazee, Award No. 575-4-3, para. 54 (10 Dec. 1996), __ Iran-U.S. C.T.R. at __; Shahin Shaine Ebrahimi, et al. and Government of the Islamic Republic of Iran, Award No. 560-44/46/47-3, paras. 55, 56 (12 Oct. 1994), reprinted in __ Iran-U.S. C.T.R. __, __ ("Ebrahimi"); Kaysons International Corporation and Government of the Islamic Republic of Iran, Award No. 548-367-2, para. 15 (28 June 1993), reprinted in __ Iran-U.S. C.T.R. _, _; Carlson, Award No. 509-248-1, para. 40 (1 May 1991), 26 Iran-U.S. C.T.R. at 210-11; McHarg, Award No. 282-10853/10854/10855/10856-1, para. 58 (17 Dec. 1986), 13 Iran-U.S. C.T.R. at 302. In the absence of such evidence, the Tribunal concludes that the Claimant was both the legal and beneficial owner of 170 shares in WIG.

69. The Claimant alleges that she also has an interest in the 510 shares recorded in the 1976 Minutes as being held by Mr. Salehinia. She has put forward a number of different contentions concerning the manner in which this interest arose. Initially, she stated that her father had purchased the WIG shares in 1973. Subsequently, she contended that Mr. Salehinia formally transferred the shares to the Tavakolis in 1975, as he stated in his 1982 letter, so that she and her brothers became the registered owners of them. She then asserted that, although Mr. Salehinia may have failed formally to transfer the shares in 1975

despite an agreement with the Tavakolis that he do so, he nevertheless should be considered as having held them for the Tavakolis from that time on. She next alleged that the Tavakolis had in fact requested Mr. Salehinia to hold the shares and to act on their behalf from either 1975 or the establishment of WIG in 1974. In her final pleadings she returned to her initial contention that Mr. Salehinia acted as a vendor of the shares rather than as a trustee.

70. The Claimant's allegations concerning her acquisition of further shares in WIG are thus contradictory. The Claimant has also failed to provide a clear description of the source of the funds used to pay for the shares, referring sometimes to money saved and invested in the United States by the Tavakolis and, elsewhere, to money Hossein Tavakoli inherited in Iran. The absence of any documentary evidence concerning the alleged transfer of U.S.$200,000 from the United States to Iran does not strengthen the Claimant's case in this regard.

71. The principal item of evidence upon which the Claimant does rely in this part of her Claim is Mr. Salehinia's 1982 letter. In that letter, Mr. Salehinia states that he sold all his 1500 shares to the Tavakolis in 1975 and then resigned from the company "and from then on I never had any responsibility or business relations with the Western Industrial Group." However, other evidence in the record and allegations of the Claimant are at odds with the contents of this letter. First, in the Statement of Claim it is alleged that the Claimant's father purchased 960 shares in 1973, not 1500 shares in 1975. Second, the 1976 Minutes indicate that Mr. Salehinia in fact remained the registered owner of 510 shares after 1975 and attended the General Meeting of that year, and the Claimant herself alleged at the Hearing that 510 shares remained registered in Mr. Salehinia's name after the 1975 sale. Third, a letter from Mr. Salehinia to WIG dated 12 March 1977 indicates that Mr. Salehinia still held shares in WIG in 1977 and considered himself able to sell them to a party of whom the Claimant admits she was ignorant. And fourth, in two subsequent affidavits Mr. Salehinia

denies that he sold any shares in WIG to the Tavakolis or acted on their behalf.

72. The only other documentary evidence submitted by the Claimant is a 1982 statement by Hossein Tavakoli, Dr. Kiaie and Mr. Miraftab that Bettie Tavakoli and Mrs. Kiaie together owned over 50% of WIG. This statement indicates that Bettie, rather than Vivian, Tavakoli owned the shares and is thus fundamentally inconsistent with the Claimant's subsequent allegations.

73. In light of the above considerations, the Tribunal concludes that the Claimant has not satisfied her burden of proving that she owned, legally or beneficially, any shares in WIG other than the 170 shares recorded in her name.

V. EXPROPRIATION

74. As noted above (see para. 12, supra), the Tribunal held in Kiaie that WIG was expropriated by the Government of Iran on 26 November 1979. In a similar situation, the Tribunal has stated that "considerations of legal certainty and the need to avoid conflicting decisions dictate that the Tribunal exercise caution before modifying the conclusions it reached in its previous Award." Fereydoon Ghaffari and Islamic Republic of Iran, Award No. 565-968-2, para. 30 (7 July 1995), reprinted in __ Iran-U.S. C.T.R. __, __. The Hearing in Kiaie was held together with that in the present Case and no evidence regarding expropriation has been submitted in the present Case that was not also considered in Kiaie. The Tribunal concludes, therefore, that there is no reason to depart from its finding in Kiaie that WIG was expropriated on 26 November 1979.

VI. COMPENSATION

A. Standard of Compensation

75. In the circumstances of this Case, the Tribunal considers it appropriate that full compensation be paid to the Claimant. See Ebrahimi, Award No. 560-44/46/47-3, para. 95 (12 Oct. 1994), __ Iran-U.S. C.T.R. at __. It is thus necessary to value WIG as of 26 November 1979.

B. Factual Background

76. In order properly to value WIG, it is necessary first to set out the context within which the company was established as well as its initial activities. A contemporaneous report prepared for WIG by an Australian consulting firm, The Urban Collaborative ("TUC"), notes that prior to the 1970's the Government of Iran had followed an intensive industrialization and urbanization program. This program's success was such that Tehran had experienced a rapid and massive population growth which had, however, brought about concomitant economic and social problems. In order to slow the growth of Tehran, the Government adopted a policy prohibiting the establishment of an industrial plant within a 20 mile radius of Tehran and fostering the development of industrial cities in other areas.

77. The TUC report explains that "[i]n essence, an **Industrial City** is an industrial estate, the planning and construction of which must provide housing for at least 500 families. In addition, the City must provide basic infrastructure - roads, water, power, etc." (emphasis in the original). Developers would usually buy land that was zoned for agriculture, and hence inexpensive. The Government would then re-zone it so that the developer would be able to construct the necessary infrastructure and sell the developed land at a profit. In order to prevent land speculation, the Government required the developer to place a ceiling price on the land as developed. In return, the Ministry of Industries and Mines, which was responsible for

granting licenses permitting new factories to be established in Iran, would direct new industries to the city.

78. WIG was established in 1974. According to its notice of incorporation, published in Iran's Official Gazette, WIG was to have a wide variety of functions that would enable it to operate as a catalyst in the establishment and development of industrial activity in Iran. Its activities were to range from carrying out studies, obtaining licenses, importing machinery and supervising construction to establishing and managing commercial and industrial companies and training personnel to work in them.

79. WIG purchased approximately 400 hectares of land beside a National Route near Kermanshah, intending to build an industrial city on this site. The Iranian Council of Ministers issued a Decree releasing the land from its agricultural status and permitting the company to develop it. The city was to be known as Western Industrial City.

80. WIG engaged TUC to prepare a master plan and feasibility studies for the city. TUC's report was submitted to WIG in September 1977. The TUC report considered the land purchased by WIG appropriate for the development of an industrial city. The report pointed to the site's direct access to the national highway system, its good underground water supplies (discovered by WIG after it bought the land), the ample space suitable for industrial buildings, the attractive setting and its proximity to Kermanshah for specialist services. The report further noted that there were significant other developments underway in the area, including an airport, a hotel, some minor industries, a major factory to produce prefabricated concrete houses and "a major government establishment."

81. WIG's site of approximately 400 hectares was divided in two by the National Highway. Some 60 hectares lay to the north of the road, while the balance of over 300 hectares lay to the south. The southernmost 150 hectares was in a somewhat elongated form running north-south, and the report considered the last 50

hectares of this too remote to be suitable for development. The report concluded that about 225 hectares in the center of the site could be developed as an industrial area with a further 50 hectares to its immediate south and the 60 hectares to the north of the National Highway being developed as residential communities.

82. The TUC report notes that "[w]here new estates are being developed, the developer is obliged to provide the capital works for infrastructure and that will be the case in Western Industrial City." The necessary infrastructure includes drainage, a water supply system, systems for disposing of domestic and industrial waste, an electricity supply, a telephone network, roads within the City, modes of public transportation within the City and roads and public transport links with Kermanshah and other centers. The report also considered that WIG had to ensure that adequate health, religious, educational and recreational facilities would be provided.

83. The cost of building and maintaining the infrastructure was considered by the TUC report to be a significant issue which WIG had to address. The report estimates that Stage 1 (preliminary work) alone of the infrastructure development would cost approximately Rls. 440 million and indicates that, for the project to be financially viable, it would be essential to obtain Government support and cooperation.

84. After purchasing the land, WIG began to develop it. Some five or six wells were dug, electro-pumps were purchased and a high-level tank was erected. On at least 50 hectares of the site, irrigation and drainage facilities and roads were constructed. WIG also constructed a high voltage electrical substation in order to make sufficient and reliable electrical power available for at least part of the site.

85. At least three companies were established at the site prior to November 1979. The Textile Company was established in 1974 as a joint venture between the Iranian Government, the

Polish Government and private investors including WIG. Its purpose was to spin and weave textiles. One cotton spinning mill was completed and another close to completion by November 1979. The Wool Company, owned by the Iranian Government and private investors, including WIG, was established in 1975. It was intended to process wool (scouring, dyeing and spinning), and a wool processing plant was under construction in 1977. Finally, the Publishing Company was established to print and bind instructional materials, carpet designs and commercial advertising. WIG owned 3.2% of its shares. A plant was constructed for it and appears to have begun operating prior to the Revolution.

86. As is concluded below (see para. 106, infra), in 1977 WIG entered into arrangements with the Textile and Wool Companies to carry out construction of their factories. In order to perform this work, WIG established a construction camp which included accommodation and construction machinery.

87. There is little evidence about the development of the residential areas of the city; according to the Claimant's contentions, work in these areas was still at a relatively early stage when the Revolution occurred.

C. Method of Valuation

88. Both Parties agree that the starting point for a valuation of WIG is the 1981 Audit Institution report. In particular, balance sheets for WIG as at 20 March 1980 and 20 March 1981 are set out on page 42 of that report. The balance sheets record assets and liabilities at their historical purchase price, less depreciation where appropriate.

89. While both Parties agree that the valuation of WIG should start with the book value of the company and its assets as set out in this report, they disagree with respect to the adjustments to be made thereto.

90. The Claimant contends that, while the historical financial statements of a company may provide some useful information, "those statements on their own are not a proper basis for determining the value of a company." The Claimant asserts that WIG was a going concern[4] and argues that the book value of its assets must therefore be adjusted to make allowance for increases in their actual market value, as well as to take into account assets that are not recorded in the books. The Claimant engaged a consulting firm, Hemming Morse Inc., to prepare a valuation report on WIG. Hemming Morse considered WIG to be a going concern and initially valued it at U.S.$22,392,190.[5] At the Hearing, Hemming Morse modified its valuation approach slightly, reaching an amended value for WIG of U.S.$22,532,852. On the basis of this value, the Claimant's 170 shares (2.83% of the share capital) would be worth U.S.$637,679.71. Mr. Regan of Hemming Morse attended the Hearing and gave evidence.

91. The Respondent asserts that WIG was not a going concern when it was expropriated and that its valuation therefore should be based on its net book value, adjusted to reflect certain errors and omissions in the books. Once these adjustments are made, contends the Respondent, WIG had a negative value. Even if such adjustments are not made, the Respondent points out, WIG's net book value on 20 March 1979 was only Rls. 48,273,966 (approximately U.S.$689,628). The Claimant's 170 shares would then be worth Rls. 1,367,760 (approximately U.S.$19,539). If adjustments are to be made to reflect the market value of WIG's assets, the Respondent asserts that such adjustments must reflect WIG's losses and the difficult general situation in Iran. The Respondent engaged the consulting firm Touche Ross & Co. and a

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[4] See further discussion at paras. 95 ff., infra.

[5] Hemming Morse in fact assessed the value of WIG to be U.S.$22,654,208, but this valuation contained an evident error with respect to WIG's interest in the Printing Company. Mr. Regan corrected this error at the Hearing, and the value asserted in the written pleadings is thus amended to reflect this correction.

group of Iranian experts, Mr. Fatehi, Mr. Yusufpour and Mr. Zanganeh, to prepare reports on the market value of WIG's assets. The Touche Ross report does not propose a valuation figure but instead reviews and criticizes the Claimant's valuation. The Fatehi report valued only WIG's land and trees. It considered them to be worth U.S.$1,566,428.43; the Claimant's share would be U.S.$44,329.92. Mr. Fatehi attended the Hearing and gave evidence.

92. Although the Claimant asserts that WIG was a going concern on the date of the expropriation, in her pleadings she does not seek to recover the full going-concern value of her ownership interest in the firm. Rather, the Claimant seeks to recover her share of the "adjusted net asset value" of WIG. This value includes no amount in respect of WIG's future earnings, goodwill or other intangible value, but just the value of WIG's tangible assets, including physical assets, securities and accounts receivable, less its liabilities as of 26 November 1979. See Birnbaum, Award No. 549-967-2, para. 38 (6 July 1993), __ Iran-U.S. C.T.R. at __. The Tribunal agrees that this approach is appropriate in determining the value of the Claimant's ownership interest in WIG. See Ebrahimi, Award No. 560-44/46/47-3, para. 98 (12 Oct. 1994), __ Iran-U.S. C.T.R. at __; Birnbaum, Award No. 549-967-2, paras. 38-41 (6 July 1993), __ Iran-U.S. C.T.R. at __; Sedco, Inc. and National Iranian Oil Company, et al., Award No. 309-129-3, para. 267 (7 July 1987), reprinted in 15 Iran-U.S. C.T.R. 23, 101-02 ("Sedco (Award 309-129-3)"); Sola Tiles, Inc. and Islamic Republic of Iran, Award No. 298-317-1, paras. 52, 64 (22 Apr. 1987), reprinted in 14 Iran-U.S. C.T.R. 223, 238, 241-42 ("Sola Tiles"); Tippetts, Abbett, McCarthy, Stratton and TAMS-AFFA, et al., Award No. 141-7-2, 12 (22 June 1984), reprinted in 6 Iran-U.S. C.T.R. 219, 226 ("Tippetts").

93. In previous Awards where the Tribunal has evaluated the adjusted net asset value of a company, it has considered it unnecessary first to determine whether the company in question was a going concern. See Birnbaum, Award No. 549-967-2, para. 38 (6 July 1993), __ Iran-U.S. C.T.R. at __; Sedco, Award No.

309-129-3, para. 267 (7 July 1987), 15 Iran-U.S. C.T.R. at 101-02; Tippetts, Award No. 141-7-2, at 12 (22 June 1984), 6 Iran-U.S. C.T.R. at 226. See also Sola Tiles, Award No. 298-317-1, paras. 52, 64 (22 Apr. 1987), 14 Iran-U.S. C.T.R. at 238, 241-42 (Tribunal assessed adjusted net asset value of a company that was found not to be a going concern). In Birnbaum the Tribunal explained that, on the facts in that case, it was unnecessary to determine whether the company was a going concern because the value of the tangible assets in question did "not depend on going-concern analysis." Birnbaum, Award No. 549-967-2, para. 38 (6 July 1993), __ Iran-U.S. C.T.R. at __; see also Sola Tiles, Award No. 298-317-1, para. 52 (22 Apr. 1987), 14 Iran-U.S. C.T.R. at 238.

94. In those cases it was possible to assess the market value of the assets in question independently of whether the company that owned them was a going concern because the assets were equally able to be acquired and exploited by another company. However, in the present Case the Claimant's expert witness testified that it was unlikely that WIG would find another company like itself to purchase the operation. He conceded that, if WIG was not a going concern in 1979, the valuation of its assets would have to be decreased, "particularly with respect to those aspects of the valuation which look to the realization of the assets on a longer-term basis when . . . conditions returned to a more normal state and assets could be liquidated as it was originally planned."[6] The Tribunal has no reason to question this view. This means that the value in 1979 of a number of WIG's assets, and in particular its land, depended critically on whether it was expected that they would be developed and realized over the longer term by WIG itself. Therefore, because of the nature of the assets in question and of WIG's activities -- and despite the fact that the Tribunal is applying the net adjusted asset value method -- in valuing WIG's assets the Tribunal first

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[6] The Claimant's expert referred particularly to WIG's construction fees, trees, sugar beet project and land. These assets are discussed in more detail below.

must determine whether WIG was a going concern as of 26 November 1979.

D. Whether WIG was a Going Concern

95. In accounting terms, the phrase "going concern" generally describes a company that "can continue to trade, eg, has adequate funds for doing so."[7] Consistent with this usage, the Parties interpret the going concern concept as meaning primarily that WIG's current assets must exceed its current liabilities so that it is capable of meeting its liabilities as they fall due and realizing its assets in the ordinary course of its operations.[8] In the Tribunal's practice, however, the term "going concern" generally has been used in a less technical sense. In determining whether a company is a going concern, the Tribunal generally examines whether the company had begun operations by the date of its expropriation and, if it had, whether it had a reasonable prospect of being able to continue its operations after the Revolution. See, for example, Ebrahimi, Award No. 560-44/46/47-3, para. 97 (12 Oct. 1994), __ Iran-U.S. C.T.R. at __; Faith Lita Khosrowshahi and Government of the Islamic Republic of Iran, Award No. 558-178-2, para. 44 (30 June 1994), reprinted in __ Iran-U.S. C.T.R. __, __; CBS Incorporated and Government of the Islamic Republic of Iran, Award No. 486-197-2 (28 June 1990), reprinted in 25 Iran-U.S. C.T.R. 131 (market for Western music detrimentally impacted by Revolution); Motorola Inc. and Iran National Airlines Corporation, Award No. 373-481-3 (28 June 1988), reprinted in 19 Iran-U.S. C.T.R. 73 (limited market for

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[7] D.B. Chilvers & C.J. Lemar (eds.), Litigation Support and Financial Assessment of Damages (2nd ed., 1991), 234-35. See also L. Chasteen, R. Flaherty and M. O'Connor, Intermediate Accounting 25 (2nd ed., 1987).

[8] There is no evidence in the record as to the exact meaning of the term "current assets" as used in WIG's books. The Tribunal notes, however, that, at least as WIG used the term in its books, current assets included items such as cash in hand, deposits, advance payments, debtors and "receivable documents." In WIG's books, no distinction is made between current and non-current liabilities. All liabilities, therefore, will be treated as current.

sophisticated communications equipment after the Revolution); Sola Tiles, Award No. 298-317-1 (22 Apr. 1987), 14 Iran-U.S. C.T.R. 223 (Revolution adversely affected the market for luxury tiles); Phelps Dodge Corp., et al. and Islamic Republic of Iran, Award No. 217-99-2 (19 Mar. 1986), reprinted in 10 Iran-U.S. C.T.R. 121 ("Phelps Dodge") (manufacturing company had not yet commenced production).

96. The approaches embodied in the Parties' submissions, on the one hand, and the Tribunal's practice, on the other, reflect different perspectives on the same central issue, that of the future viability of a company. The Tribunal will therefore examine, first, whether WIG's current assets exceeded its current liabilities, and second, WIG's business prospects under the new regime.

1. Current assets and current liabilities

a. Facts and contentions

97. The Parties first raised arguments concerning WIG's profit and loss accounts. According to the 1981 Audit Institution report, WIG's accumulated losses were Rls. 11,726,034 to March 1979 and Rls 13,043,049 to March 1980. The Touche Ross report notes that WIG not only never had turned a profit since its establishment in 1974, but had suffered its biggest loss in 1976-77, "a year when Iran enjoyed relative political stability and its industries generally experienced substantial economic growth." The Respondent contends that, as WIG had recorded losses in each year of its operations, it did not have the finances to pay its current liabilities and should be considered not to have been solvent.

98. Hemming Morse contends that the losses incurred by WIG up to 1979 do not indicate that WIG was experiencing problems and must rather be understood in light of the nature of WIG's operations. Hemming Morse explains that

> WIG was essentially in a start-up mode for much of the period prior to 1980. The development of [the Industrial City] was planned to be accomplished over a ten to fifteen year period. Much of WIG's initial efforts were directed at the preparation of feasibility studies and the development plan itself. Substantial efforts were also devoted to the development of items, such as sources of water and electricity supplies . . . . To dismiss the viability of this development based on the accounting "losses" incurred during this period is an approach that is seriously flawed and shortsighted.

99. Turning from WIG's profit and loss to its actual recorded current assets and liabilities, WIG's Balance Sheet for the year ending 20 March 1980 (set out in the 1981 Audit Institution report) indicates that for the year ending 20 March 1980 WIG had current liabilities of Rls. 127,265,335 as against current assets of only Rls. 30,703,322.[9]

100. Hemming Morse asserts that Minutes of a meeting of the Textile Company Board of Directors held on 4 July 1979 indicate that the Textile Company resolved to pay WIG Rls. 136.6 million for the purchase of WIG's construction camp and for construction supervision fees owed to WIG. Those Minutes record that

> WIG has offered the transfer of ownership of the camp facilities to [the Textile Company]. This matter has been discussed and decided by the Board in September 14, 1978. The camp has been

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[9] Both Parties rely on WIG's Balance Sheet as at 20 March 1980. The Tribunal has determined that WIG was expropriated on 26 November 1979, some months prior to the date of this Balance Sheet. WIG's Balance Sheet as of 20 March 1979, one year earlier, is also in the record. Overall there was a slight decline in WIG's book value during the 1979 financial year. However, there is insufficient information in the record for the Tribunal to determine WIG's exact book value on 26 November 1979, a date some two thirds of the way through the financial year in question. In light of the fact that both Parties rely on the 1980 Balance Sheet and that the decline over the year was slight, the Tribunal deems the 20 March 1980 Balance Sheet (the "Balance Sheet") to reflect WIG's book position (before appropriate adjustments are made) at the moment the company was expropriated by the Respondent.

> valued by valuers of the Ministry of Justice and total amount asked for is 97 mil.rials which include the whole camp, land, water well, and all installations. WIG has also demanded the allocation of [Rls.] 39 mil[lion] for the %6 of know-how and profits for completing the 1st, and constructing the 2nd. stage thus far. This percentage has also been approved by the board in Sept. 14, 197[8]. The calculation of this account is as following:
>
> | | |
> |---|---|
> | The value of premises | Rials 97,631,963 |
> | %6 advance payment to WIG (Note below) | 15,000,000 |
> | Total due to WIG | 112,631,963 |
>
> | | |
> |---|---|
> | WIG's account with [the Textile Company] as shown in B.S. | 105,156,425 |
> | Amount due to WIG | 7,475,538 |
>
> Note: The Board decides to pay in advance Rls. 15 mil. to WIG for organizing and supervising work due at the rate of %6 on cost-plus basis of the total expenditure for the construction work organized by them.
>
> . . .
>
> The board approves the settlement of accounts between the two companies & the transfer of title of the camp and its ownership to [the Textile Company].

Whether because of the expropriation or otherwise, this transaction was not included in WIG's books. Hemming Morse contends that, once it is taken into account, WIG's current assets exceed its current liabilities.

101. The Respondent concedes that the construction camp was sold to the Textile Company prior to the date of valuation but does not discuss the impact of this transaction on WIG's current assets and liabilities. It instead emphasizes that WIG's Balance Sheet shows that its current liabilities were four times as large as current assets. Cross-examined about such a situation, Mr. Regan said that "[a] strict ratio of four times the debts is an indication of potential financial difficulty."

102. The Respondent further points out that the 1981 Audit Institution report recommended making a number of adjustments to WIG's Balance Sheet in order better to reflect WIG's actual

situation as at 20 March 1981. The report concluded that WIG's current assets overall should be increased by Rls. 70,517,813 and its current liabilities by Rls. 92,406,626. If these adjustments, proposed in December 1981, are applied to the Balance Sheet of 20 March 1980, WIG's current liabilities would have been Rls. 219,671,961 and its current assets only Rls. 101,221,135, an even greater deficit.

b. The Tribunal's decision

103. Both Parties agree that WIG recorded losses in every year of its operations amounting in total to some Rls. 11 million by 20 March 1979. However, losses over a number of years do not of themselves indicate that WIG was not a going concern. As a long-term development company, WIG would have expected some losses in its early stages. These losses are not directly relevant to determining whether WIG's current assets were sufficient to meet its current liabilities.

104. The Balance Sheet indicates that WIG's current liabilities were about four times its current assets. The Claimant's expert recognized that such an imbalance may present a serious liquidity problem. However, the Claimant asserts that WIG's books need to be adjusted to reflect a 1979 transaction whereby the Textile Company agreed to pay WIG Rls. 136.6 million for the purchase of a construction camp and payment of supervision fees.

105. The Respondent concedes that the construction camp was sold to the Textile Company prior to the date of valuation. The 1979 Minutes of the Textile Company, a contemporaneous and unchallenged document, constitute strong evidence that WIG sold the construction camp to the Textile Company for Rls. 97,631,963 (see para. 100, supra). The Tribunal therefore concludes that prior to the date of expropriation the Textile Company purchased the construction camp from WIG for Rls. 97,631,963.

106. The 1979 Minutes of the Textile Company also support the Claimant's assertion that WIG carried out construction supervision work for a 6% fee. Other evidence in the record similarly indicates that WIG used the construction camp to perform construction work for the Textile Company, as well as for the Wool Processing Company. The 1979 Minutes of the Textile Company establish that prior to the date of expropriation the Textile Company's Board of Directors authorized payment of such fees to WIG.

107. However, the amount of this payment is less clear. The 1979 Minutes record that WIG had demanded payment of Rls. 39 million for those fees and that the Textile Company Board decided to pay Rls. 15 million as an "advance payment." Hemming Morse contends that this means that the Textile Company accepted that the whole amount of Rls. 39 million had become payable to WIG in 1979; presumably Hemming Morse considers the Rls. 15 million simply the first instalment. However, the Minutes could equally be read to indicate that the Textile Company would pay WIG Rls. 15 million in 1979 with the balance of the fees becoming payable only once the project was completed. There is no evidence that in 1979 WIG had done the work to justify further payments. In light of the equivocal nature of the evidence, the Tribunal concludes that only Rls. 15 million was payable to WIG in 1979 in respect of the construction fees.

108. The Textile Company thus owed WIG an aggregate amount of Rls. 112,631,963. WIG's liabilities as shown on the Balance Sheet include a debt to the Textile Company of Rls. 105,156,426 and this is confirmed by the Textile Company's Minutes.[10] This liability was canceled out by the 1979 transaction, leaving a balance of Rls. 7,475,538 to be added to WIG's current assets as

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[10] The 1981 Audit Institution report indicates that WIG's books in fact showed a debt to the Textile Company of Rls. 122 million, and states that this debt existed in previous years. However, the Auditor's Report for the year ending 20 March 1979 shows that the Textile Company did indeed owe WIG Rls. 105,156,425 as of that date.

a receivable. Once the transaction is taken into account, WIG's current assets become Rls. 38,178,860 and its current liabilities Rls. 22,108,909. Its current assets would therefore exceed its current liabilities.

109. The 1981 Audit Institution report recommended that other modifications be made to the Balance Sheet that would increase WIG's current liabilities by Rls. 92 million and its current assets by Rls. 70 million. That report is a near-contemporaneous document and thus potentially carries significant weight. However, the Audit Institution does not make clear in the report how it arrived at these overall adjustment figures. In the course of the report it identifies particular items with respect to which it considers that adjustment should be made, but in most cases it specifies neither what the amount of the particular adjustment should be nor in what account it should be entered. Nor is the basis for all the adjustments set out. It is thus impossible for the Tribunal to ascertain exactly what specific adjustments are included in the overall adjustment figures set out in the report. This consequently makes it difficult for the Tribunal to assess whether those adjustments are appropriate in the context of the present valuation. Such an assessment by the Tribunal is particularly necessary given that, in the context of the Revolution and the absence of WIG's former owners, the Audit Institution may not have had access to all the relevant information.

110. A close reading of the Institution's report indicates that its recommendation that WIG's current liabilities be increased by Rls. 92 million includes Rls. 82 million to reflect an amount debited to the Textile Company for the electric substation; the Institution believes WIG should have borne this cost itself and should reimburse the Textile Company's account. For reasons explained below (see paras. 179-80, infra), the Tribunal considers that the payment was correctly attributed to the Textile Company. This element of the Audit Institution's recommendation should therefore be excluded.

111. The Institution's recommendation that WIG's current assets be increased by Rls. 70 million appears to include an amount for "expenses" to be charged to WIG's affiliated companies for use of WIG's buildings and equipment. The Claimant has conceded that most of the buildings and equipment which WIG owned formed part of the construction camp and was therefore transferred to the Textile Company in July 1979 (see para. 243, note 22, infra). Consequently, it is unlikely that WIG had the right to charge expenses for the use of those facilities and its books should not be adjusted to reflect such expenses. The Institution's report does not specify the amount it considered that WIG could have charged for the use of these facilities. After considering all the other information set out in the Institution's report, the Tribunal deems the Institution to have valued those revenues at Rls. 25 million. That amount must therefore be deducted from the Rls. 70 million that the Audit Institution recommends adding to WIG's assets.

112. In the absence of any more specific indications, the Tribunal accepts the Audit Institution's other recommendations with regard to WIG's current assets and current liabilities, so that current assets would be increased by Rls. 45,517,813 and current liabilities by Rls. 10,406,626. When these further adjustments are made to WIG's Balance Sheet as already amended in para. 108, supra (where account was taken of the transaction with the Textile Company), WIG's current assets (Rls. 83,696,673) greatly exceed its liabilities (Rls. 32,515,535).

113. The 1981 Audit Institution report recommended that WIG's capital investment in the Textile Company be written off because of the latter's "financial status." If the Textile Company was in such a parlous financial state, it may not have been able to pay the amounts that it owed to WIG. However, a large part of the payment by the Textile Company could have been effected by canceling a debt owed by WIG to the Textile Company, and only some Rls. 7 million remained to be transferred to WIG by the Textile Company. Considering the figures set out above, WIG's

current assets would have exceeded its current liabilities even had the Textile Company not been able to pay this amount.

114. In light of the above considerations, the Tribunal concludes that on 26 November 1979 WIG's current assets exceeded its current liabilities.

2. WIG's prospects under the new regime

a. Facts and contentions

115. The Tribunal now considers WIG's prospects under the new regime. The TUC report noted that WIG's project was pioneering in two respects: it was the first industrial city project undertaken by private investors; and it was intended to create a major industrial center in an area where none had existed before. The report states that, because of its innovative nature, the project required support and cooperation from many branches of the Government. In particular, as WIG's city would compete in attracting industries against other cities that were publicly funded, including one in the same area, it would have to arrange for the Government to provide financial assistance or to take responsibility for some of the costs associated with the infrastructure.

116. The Respondent emphasizes this reliance on Government cooperation and seems thereby to imply that that cooperation was not forthcoming after the Revolution. For its part, Touche Ross notes that "[t]he Islamic revolution intended to give priority to the agricultural sector, thereby making Iran self-sufficient in food. It sought to diversify and increase Iran's non-oil exports." Touche Ross does not undertake to explain exactly what impact these policies might have had on the Government's attitude toward a project such as WIG's, which included both export-oriented industry and industry closely related to the agricultural sector.

117. The Respondent also highlights the poor general economic conditions in Iran during the relevant period. More specifically, Touche Ross argues that, due to the growth in demand for oil (and its increased value), the Iranian economy began to experience inflationary pressures at the same time that the cost of imports was rising. Unemployment ran at approximately 30% in the period 1979-83 and overall conditions "were not conducive to new investment in industrial projects or building contracts and/or the injection of further capital into existing ones."

118. The Claimant asserts that Touche Ross has not explained how those factors apply to the particular circumstances of WIG. She asserts that, while the revolutionary conditions in Iran are relevant to a valuation of WIG, one must also allow for the fact that an investor would have been able to distinguish between companies ruined by the Revolution and those that suffered but would have been expected to recover once the political turmoil subsided. She quotes from Saghi, Award No. 544-298-2, para. 100 (22 Jan. 1993), __ Iran-U.S. C.T.R. at __:

> The Tribunal is convinced that the Islamic Revolution cannot be ignored when seeking to relate N.P.I.'s value in 1975 to that of 1980. . . . A potential investor in Iran in 1980 would indeed have weighed the political and economic risks enumerated in the [Respondent's] report. However, the impact of the Revolution should not be exaggerated or reduced to broad generalizations. It cannot be assumed that the potential buyer would fail to distinguish between investments and projects that were frustrated or undermined by the Revolution and those which might reasonably be expected to recover once the turmoil of the Revolution itself had subsided.

119. The Claimant contends that WIG's prospects under the new regime in fact continued to look healthy and that little would have had to be changed in the project. She argues that printing and textiles are industrial mass-consumer items which are "recession-proof." She contends further that, even if WIG suffered somewhat from the immediate effects of the Revolution,

the fact that it was a 10 or 15 year project meant that such fluctuations would have little impact on its long-term value.

120. The Claimant also alleges that for most of 1979 the new regime was well-disposed toward WIG and its affiliated companies and that WIG was able to work with the new Government. She contends that "[a] spirit of tolerance existed through much of 1979; indeed, the post-revolution office of IDRO (the Industrial Development and Renovation Organization) resumed operations as before." Dr. Kiaie, who remained in Iran at least until July 1979, stated that before leaving Iran he met with various senior officials of the new Islamic Government and that they assured him that the WIG site would be protected and that the Government did not wish to see its investment go to waste.

121. In an invitation to shareholders to attend the 1979 Textile Company General Meeting, dated 31 May 1979 and signed by Dr. Kiaie, it is noted that

> the operations of [the Textile Company] were halted during [the period October 1978 to March 1979] due to occurrence of numerous strikes and departure of Polish and Australian experts from Iran. . . .
> Fortunately, the officials of the Ministry of Industries and Mines, Ministry of Labor & Social Affairs, and the Governorate General of Kermanshah have shown extreme interest in the resumption of [the Textile Company's] operations. Since they have deemed this project as a useful and basic industry in the field of textile with its raw materials being produced in the region they have lately not spared any financial and administrative assistance in this regard, and expressed great interest in commissioning it. The Company is already busy preparing grounds to put the first phase in operation within the next few weeks, and for this purpose has asked its Polish partners to bring back to Iran, within the shortest possible time, those engineers and technicians who previously worked in the factory. The Ministry of Labour and Social Affairs too is trying to meet the financial needs of the Company in different ways.
> Meanwhile, the Government, in order to preserve and protect domestic industries, has restricted

the import of textile goods in Iran, and consequently the Company's products, which comprise the cotton yarn needed by weaving industries, have remained immune from illogical competition of Asian states, thus guaranteeing the Company's profitability after attaining full production.

The Minutes of the Textile Company Board Meeting of 4 July 1979 note that

1. The efforts of the managing director to sec[]ure funds for continuing the activities of the company was approved. Since the capital increase of the company which was demanded by the extra-ordinary meeting of the shareholders, last, was not completed, due to revolution in Iran, and the complementary loan did not go through in ICB, therefore for commencing the first stage and completing the second the company needs money. To this end His Excellency the Minister of Industries and Mines had promised the managing director to assist the company in any possible way, and H.E. Dr. Reza Sedoughi, under-secretary of the Ministry of Labour and Social Welfare has taken serious steps to revive the activities of the Company. He has written letters to banks, ICB and IMDB, asking for [Rls.] 300 mil[lion] to start 1st stage, and [Rls.] 200 mil[lion] to complete 2nd. He assured managing director that if banks delay the process of supplying credit he has spoken to under-secretary of Ministry of I&M to use special funds allocated for revival of industries. This request is in its normal process in the Ministry.
2. The Polish partners expressed the attitude of full cooperation with the Islamic Republic of Iran to maintain the industrial development of Kermanshah which has been undertaken by the joint-venture. Whether the company becomes a government enterprise or remains private joint-stock, the objective of the company which is the production of cotton yarn, will be pursued. If sufficient credit becomes available, work permit be issued for Polish technical staff, permission to transfer their earnings in foreign exchange, and a secure working environment becomes available, the Polish partners will send sufficient number of technical personnel to start the activities.

122. Hemming Morse points to the continued existence of WIG in the 1990's as evidence that the Company's activities were not frustrated by the Revolution and asserts that this evidence should be given "significant weight" in valuing WIG as of October 1980.

b. The Tribunal's decision

123. Although there is evidence that WIG and its affiliates continued to exist after 1979, the valuation of a company on the date of its expropriation must be grounded on facts known at that date and may not take into account evidence of later developments which could not have been known then. See American International Group, Inc., et al. and Islamic Republic of Iran, et al., Award No. 93-2-3, at 16-17 (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 96, 106; INA Corporation and Government of the Islamic Republic of Iran, Award No. 184-161-1, at 10 (13 Aug. 1985), reprinted in 8 Iran-U.S. C.T.R. 373, 380; Phelps Dodge, Award No. 217-99-2, para. 29 (19 Mar. 1986), 10 Iran-U.S. C.T.R. at 132. References to post-1979 facts therefore should in general be ignored in assessing WIG's value in 1979.

124. The Islamic Revolution began in 1978 and was declared victorious on 11 February 1979. Revolutionary conditions and the uncertainties associated with it brought virtually all activity at the Western Industrial City site to a halt by early 1979. Nevertheless, such a turbulent situation could not reasonably have been expected to last indefinitely. As the Tribunal pointed out in Saghi (see para. 118, supra), in valuing a company during the Revolution it is necessary also to look at the long-term prospects that the company would have been expected to enjoy.

125. By November 1979 it had become clear that the new Government held radically different policies from those of the former regime with respect to industrialization, urbanization, trade and foreign investment. While the former regime had invested Iran's oil revenues in development projects in an attempt rapidly to transform Iran into an industrialized society,

the new Government placed a greater priority on the maintenance of agriculture and traditional activities and on direct State control of the economy.

126. As Touche Ross points out, these and other general factors in all likelihood meant that the overall climate for industrial activity in Iran in 1979 was less propitious than it had been prior to the Revolution. WIG's project involved developing and attracting new capital and industries, and its prospects must consequently have been negatively affected. The Claimant herself concedes that general economic conditions had a negative impact on WIG; she states that the economic boom due to the increase in oil revenues in the mid-1970's and the encouragement of the former Government were such that "placing 200 heavy and small factories . . . over a ten year period was absolutely obtainable, had not the political upheaval of the late 1970s taken place" (emphasis added). It is thus clear that there was at least a reduction in WIG's prospects due to the Revolution and this must be borne in mind in valuing WIG's assets.

127. However, this does not establish that the Western Industrial City project had ceased to be viable altogether. The new Government appears to have chosen to continue to encourage WIG's project. The notice to attend the 1979 General Meeting of the Textile Company and the Minutes of that Meeting, both quoted at length above, indicate that by the middle of 1979 senior officials in the new Government were strongly supportive of the continuation of activity at the Western Industrial City site and were prepared to take concrete steps to ensure that financing was made available to it. As noted above, Government support was crucial to the viability of the project. The Minutes also indicate that the Polish Government remained committed to the project.

128. Given these indications of support, the Tribunal is satisfied that during most of 1979 WIG continued to have business prospects that were positive, albeit not as promising as they had been prior to the Revolution.

3. Conclusion on whether WIG was a going concern

129. In light of the above considerations relating to WIG's balance sheet and its business prospects under the new Government, the Tribunal concludes that WIG was a going concern on the date of expropriation. Its assets must therefore be valued on the basis that they formed part of an ongoing industrial city development project, although bearing in mind that the economic environment in Iran after the Revolution was less buoyant than it had been previously and that this would have some impact on the amount for which WIG would have been able to sell its assets.

130. The Tribunal will value first WIG's principal assets, concerning which the Parties have submitted extensive pleadings, and then WIG's remaining assets and liabilities.

E. Valuing Particular Assets

131. The assets of WIG which are to be valued individually are:

- land;
- rights to charge electricity connection fees;
- shares held in the Textile Company;
- shares held in the Wool Company;
- shares held in the Printing Company;
- fees receivable for construction work;
- fees for future construction work;
- a housing project;
- a plantation of trees; and
- a contract for the supply of sugar beets.

These assets will be dealt with in turn.

1. Land

a. Facts and contentions

132. The TUC report concluded that some 225 hectares in the center of WIG's site was suitable for development as an industrial area, with a further 50 hectares to its immediate south and 60 hectares to the north of the National Highway being developed as residential communities. The report recognizes that a significant part of this area would be required for infrastructure purposes such as roads, sewerage, treatment works, reservoirs, etc., and thus would not be available for sale. The report estimates that infrastructure, town center and open spaces would cover a total of 119 hectares, leaving 45 hectares available to sell for residential purposes and 180 hectares available for industrial uses.[11] The land available for industrial uses was divided into 102 hectares for light industry and 78 hectares for general industry.

133. TUC's figures are based on a total site area of 3,930,000 sqm. However, the 1981 Audit Institution report states that WIG purchased only 3,797,793 sqm of land. Both Parties ultimately accepted this lower figure. This leaves open the question whether and how TUC's detailed land use figures should be applied to a slightly smaller overall site. Hemming Morse retains the figures set out in the TUC report for industrial and residential uses and reduces TUC's figure for infrastructure purposes or unused land. Hemming Morse therefore proposes the following allocations:

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[11] A further 49 hectares of land at the southern end of the site would be unused.

Use	TUC area	HM area
light industry:	1,020,000	1,020,000
general industry:	780,000	780,000
residential:	450,000	450,000
infrastructure & other:	1,680,000	1,547,793
Total	3,930,000	3,797,793

Touche Ross, in contrast, contends that 1,853,896 sqm would have been required for infrastructure, and the Respondent asserts that 1,630,000 sqm would have had to have been set aside for infrastructure and other public uses.

134. The Parties agree that, of its 3,797,793 sqm, WIG already had sold the following areas of land:

Date	Area	Purchaser	Price
1975	60,000 sqm	Textile Co.	Rls. 200 per sqm
1976	20,000 sqm	Wool Co.	Rls. 300 per sqm
1978	10,000 sqm	Printing Co.	Rls. 600 per sqm

It appears that the 30,000 sqm sold to the Wool and Printing Companies was for light industrial use and the 60,000 sqm sold to the Textile Company was for general industrial use. Dr. Kiaie asserted that the first two sales were at "arms-length" because the Textile Company's Board of Directors included substantial Polish Government ownership and the Wool Company's Board included two representatives of an Iranian Government agency.

135. The Claimant asserts that the Ministry of Industries and Mines authorized WIG to sell land to the factories at a maximum of Rls. 600 (U.S.$8.55) per sqm. She submits an affidavit from the former Minister of Industries and Mines confirming this. The Claimant submits that in 1980 the land was in fact worth this authorized price. She points to the sales of land to the Textile and Wool Companies as evidence. Applying IMF inflation rates to the Rls. 300 per sqm paid by the Wool Company for light

industrial land in 1976, Hemming Morse arrives at a figure of Rls. 631 in 1980. Applying the same rates to the Rls. 200 per sqm paid by the Textile Company for general industrial use in 1975, Hemming Morse reaches a figure of Rls. 400 per sqm in 1980. Hemming Morse thus asserts that the light industrial land was worth Rls. 600 per sqm in 1980 and the general industrial land Rls. 400.

136. In the Statement of Claim the Claimant contends that the Department of Taxation had placed a price of Rls 122 per sqm on the residential areas. Hemming Morse takes this figure and calculates that, adjusted for inflation from 1975 to 1980, it was equal to Rls. 244 in 1980.

137. Hemming Morse thus calculates the value of WIG's land in 1980 as follows:

	Area (sqm)	Value (Rls/sqm)	Total value
light industry:	990,000	Rls. 600	Rls. 594 million
general industry:	720,000	Rls. 400	Rls. 288 million
residential:	450,000	Rls. 244	Rls. 109.8 million
TOTAL:	2,160,000		Rls. 991.8 million
			(U.S.$14.17 million)

138. The Respondent contends that these prices might have been realized with infrastructure installed, but without it the land was worth far less. The Respondent asserts that there was only infrastructure on 50 hectares of the land. Moreover, the Respondent alleges that the Claimant has not produced any evidence that the Council of Ministers approved a sale price of Rls. 600 per sqm. In any event, continues the Respondent, because of the competition between industrial cities, land was often sold for less than the authorized maximum.

139. Touche Ross is "firmly of the opinion that a permitted sale price provides no indication of market value." Touche Ross also contends that, given the general economic conditions prevailing in Iran in October 1980, it was unlikely that there

was any demand for WIG's land as industrial sites. Touche Ross argues that in the absence of evidence of such demand the land should be assessed at its cost price, or, if higher, at its agricultural value.

140. Dr. Kiaie also gave evidence that the land was worth Rls. 600 per sqm, but he gives a different reason. He states that the prices of Rls. 200 per sqm paid by the Textile Company in 1975, and Rls. 300 per sqm paid by the Wool Company in 1976, were not the full price. Dr. Kiaie asserts that Rls. 200 per sqm was the amount the Textile Company paid in cash, but that it also agreed to bear the burden of various infrastructure expenses, including a road to connect the factory to the National Highway and possibly also drainage, sewage, waste disposal and water supply. Dr. Kiaie stated that the real price of the land sold to the Textile Company, once these infrastructure expenses are included, was in fact Rls. 525 per sqm in 1975. He alleges that the real price for this type of land subsequently was increased to Rls. 600 per sqm.[12]

141. The Respondent submitted a letter that Dr. Kiaie and Mr. Miraftab wrote to the Textile Company, undated but apparently written after their departure from Iran. In the letter, Dr. Kiaie and Mr. Miraftab write:

> the land has been allotted to the [the Textile Company] at the cost price namely at the rate of 14 rials, and the difference balance of up to Rls. 200 has been expended on providing water and power to the factories.

The Respondent asserted that this letter indicates that the real price of the land was only Rls. 200 per sqm, not Rls. 525 per sqm.

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[12] He stated that the Rls. 300 per sqm paid by the Wool Company for general industrial land was just the amount paid in cash and that the Wool Company also agreed to contribute to the drainage, sewage, disposal, water supply and so on, but he did not clarify whether the full price of the general industrial land was different from that for light industrial land.

142. In response, Dr. Kiaie stated: "The price fixed by the government was Rls. 525. We took that as Rls. 200 and this cost us Rls. 14 at that time were Rls. 8 . . . the rest we had spent on infrastructure."

143. The Respondent submits an assessment of WIG's land prepared by Mr. Fatehi, Mr. Yusufpour and Mr. Zanganeh-Nia (the Fatehi report). The Fatehi report assesses the land in 1979-80 in terms of its agricultural value. It assigns values of between Rls. 15 per sqm and Rls. 40 per sqm to the various areas of the site, for a total value of Rls. 108 million (U.S.$1,542,857).

144. The Respondent finally asserts that, even had WIG been able to sell more land, those sales would have been subject to a sales commission of 6% and management expenses, conveyance tax and consultancy fee of 4%. It argues that the value of the land must be reduced by these percentages and points out that the Claimant herself deducted them in her valuation calculations in the Statement of Claim.

b. The Tribunal's decision

145. The evidence on the area and value of the land is not as precise or complete as could be desired. The Tribunal refers to its comments in Birnbaum, Award No. 549-967-2, para. 49 (6 July 1993), __ Iran-U.S. C.T.R. at __:

> As it has done in past awards, the Tribunal will make its best approximation of the value of AFFA and of the Claimant's proprietary interest therein based on the best possible use of the evidence in the record and taking into account all the circumstances of the Case. . . . In a similar situation, the Tribunal has held that "[w]hile the Claimant must shoulder the burden of proving the value of the expropriated concern by the best available evidence, the Tribunal must be prepared to take some account of the disadvantages suffered by the Claimant, namely its lack of access to the detailed documentation, as an inevitable consequence of the circumstances in which the expropriation

took place." Sola Tiles, para. 52, 14 Iran-U.S. C.T.R. 223, 238.

146. The Parties agree that WIG initially purchased 3,797,793 sqm of land. In ascertaining how much of this land could be used and for what purpose, the TUC report represents contemporaneous expert evidence which is worthy of reliance. However, that report specifies land use areas for a slightly larger site than the area agreed upon by the Parties. The Claimant retained the areas for valuable land uses set out in the TUC report but reduced the amount of land designated as unused or set aside for infrastructure to 1,547,000 sqm in order to fit within the smaller total area. The Respondent contended that either 1,853,896 sqm or 1,630,000 sqm would be required for infrastructure alone and that a further 50 hectares would be unused.

147. The Tribunal concludes that the fairest method for determining the areas destined for various land uses at the site is to reduce all the TUC land use figures in proportion to the reduction in the total site size. This results in the following figures, as compared with the original TUC areas and Hemming Morse's proposed areas (in sqm):[13]

Use	TUC area	HM area	Tribunal's findings
light industry:	1,020,000	1,020,000	985,687
general industry:	780,000	780,000	753,761
residential:	450,000	450,000	434,862
infrastructure & other:	1,680,000	1,547,793	1,623,485
TOTAL	3,930,000	3,797,793	3,797,795

148. From these figures must be deducted the land already sold to WIG's affiliated companies. The Parties agree that, prior to

[13] 3,797,793 divided by 3,930,000 = 0.96636. Each of the allocated areas is multiplied by this number to reach the adjusted area.

the Revolution, WIG sold 60,000 sqm to the Textile Company, 20,000 sqm to the Wool Company and 10,000 sqm to the Printing Company. These sales reduce the respective areas available for sale as follows (in sqm):

Use	Initial Area		Sold		Available
light industry:	985,687	-	30,000	=	955,687
general industry:	753,761	-	60,000	=	693,761
residential:	434,862	-	0	=	434,862
TOTAL:	2,174,310	-	90,000	=	2,084,310

149. Given the presence of independent board members, the Tribunal accepts that the prices paid by the Textile and Wool Companies are the best evidence of the value of the land at the time. However, it is not entirely clear exactly what prices those companies did pay. Dr. Kiaie alleges that the Textile Company purchased land from WIG for an effective real price of Rls. 525 per sqm in 1975, paying Rls. 200 in cash and the rest in infrastructure investment, and that the Wool Company paid an effective price greater than the Rls. 300 per sqm that it paid in cash. The Respondent contends that the real prices paid by these two companies was at most Rls. 200 and 300 per sqm, with Rls. 14 per sqm being paid in cash and the balance paid towards infrastructure development.

150. The undated letter from Dr. Kiaie to the Textile Company, submitted by the Respondent and quoted above, supports the Respondent's position that the Textile Company paid only Rls. 200 per sqm in total; Rls. 14 per sqm was paid in cash and the balance went towards infrastructure expenses. The Respondent's position in this regard is further supported by the Report of the Official Inspector for the year ending 20 March 1977. That Report indicates that WIG received Rls. 11,150,000 from the Textile Company and Rls. 5,720,000 from the Wool Company, both for "infrastructural expenses." Rls. 11,150,000 is equal to 60,000 sqm multiplied by Rls. 186 per sqm (Rls. 200 less Rls. 14) and Rls. 5,720,000 is equal to 20,000 sqm multiplied by Rls. 286 per sqm (Rls. 300 less Rls. 14 per sqm).

151. In light of this evidence, the Tribunal finds that the Textile Company paid Rls. 200 per sqm for general industrial land in 1975 and the Wool Company Rls. 300 per sqm for light industrial land in 1976 as the total purchase prices for their respective parcels of land.

152. Hemming Morse contends that, by virtue of inflation, these figures are equal to Rls. 400 and Rls. 600, respectively, at the date of expropriation. This position is supported by the 1981 Audit Institution report, which records that in 1978 the Printing Company paid Rls. 600 per sqm for 10,000 sqm of light industrial land at the site. WIG owned only 9.1% of the Printing Company, so that this sale would have been at arm's length. This sale confirms the 1979 price alleged by Hemming Morse for light industrial land and also renders credible Hemming Morse's calculated price increases for the general industrial land.[14]

153. Hemming Morse contends that the residential land was worth Rls. 244 per sqm by 1980. There is no evidence of any sale that would support this allegation. Mr. Fatehi valued the land in the residential areas of the WIG site for agricultural purposes at between Rls. 15 and 25 per sqm. Bearing in mind that land zoned for residential purposes would be worth more than that zoned for agricultural uses, but also that by November 1979 there was little development of the residential areas, the Tribunal considers it appropriate to take the figure of Rls. 50 per sqm as the average value at the time of all of those parts of the land.

154. The Tribunal thus provisionally values the light industrial land at Rls. 600 per sqm, the general industrial land at Rls. 400 per sqm and the residential land at Rls. 50 per sqm. The provisional value of the site would thus be as follows:

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[14] Although it is possible that not all of the site was equally developed, the Parties have submitted no argument as to whether, and how, prices for industrial land might have varied across the site. The Tribunal thus accepts that uniform prices applied across the site.

Use	Area (sqm)	Value (Rls./sqm)	Total value
light industry:	955,687	600	573,412,200
general industry:	693,761	400	277,504,400
residential:	434,862	50	21,743,100
TOTAL:	2,084,310		Rls. 872,659,700

155. This provisional value must be discounted to reflect the generally poor conditions in Iran at the time of the expropriation and the less auspicious atmosphere for industrial developments under the new regime. Even taking account of the project's longer-term prospects, a reasonable purchaser at the time would have assumed either that less of the land would have been sold, that it would have to have been sold for a lower price or that it would have taken longer to sell.

156. Accordingly, based on the evidence before it and taking into account all the circumstances of this Case, the Tribunal considers it fair and reasonable to discount the value of WIG's land by 20% to Rls. 698,127,760.

157. In her initial pleading, the Claimant assumed that fees and commissions equal to 10% of the price of the land -- normally applicable on a sale -- ought to be deducted from the land's value. The Claimant subsequently omitted all mention of these fees and commissions, but she did not give any reason for this change of position or reply to the Respondent's stated position on the matter. In view of this, the Tribunal concludes that the Claimant has failed effectively to rebut the position taken by the Respondent, a position that was indeed adopted by the Claimant herself in her Statement of Claim. Applying this 10% deduction to the value of Rls. 698,127,760 reached above results in a final value for the land of Rls. 628,314,984.

2. Right to Electricity Connection Fees

a. Facts and contentions

158. In 1976 WIG decided to purchase a high voltage electrical plant from the German company AEG in order to make electrical power available to at least parts of the site. In the same year, WIG obtained permission from the Ministry of Power to install the substation. According to an invoice dated 20 December 1976, the substation cost DM 2,439,140.

159. The Minutes of the 1976 WIG Annual General Meeting record that, in order to finance the project, WIG decided

> to collect, according to the tariff of Power Organization, the quota of [the Textile, Wool and Printing Companies] and borrow loan from Commercial Banks for the Group, if deemed necessary, until such time the capital is secured through Land assignment and other revenues.

The substation was built on WIG land and its cost was paid by 1978. WIG's books recorded a total cost of approximately Rls. 100 million. Of this amount, Rls. 85 million were debited by WIG to the account of the Textile Company and Rls. 14 million to that of the Wool Company. WIG's books retained an entry of Rls. 596,209 in respect of the substation as an asset.

160. Although the Claimant originally sought to include the value of the substation itself in WIG's value, Dr. Kiaie later conceded that the substation may have been transferred to the local power company prior to 26 November 1979, and Hemming Morse does not include it in its valuation. The Tribunal thus concludes that the substation itself no longer formed part of WIG's assets on the relevant date.

161. The Claimant alleges that WIG nevertheless had the right to charge connection fees for the connection of new users to the substation. The local power supplier, Western Regional

Electricity Company ("WREC"), usually charged Rls. 10,000 per KW for initially connecting customers to the power supply. The Claimant contends that the Ministry of Power, as an incentive to WIG's development program, gave WIG the right to charge the Rls. 10,000/KW fee for connections to the substation and that WIG retained this right after the substation was transferred to the power company.[15] Indeed, the Claimant asserts that the payments by the Textile and Wool Companies represented advances on the fees for connection to the substation. This is supported by the 1979 Textile Company Minutes, which note that

> [s]ince [the Textile Company] has contributed the amount of 85 mil. rials toward the installment of sub-station, consequently it will not pay the amount of 10,000 rials which WREC charges for each kilowatt power. But it will pay the cost of all electricity which will be consumed by the factories, directly to WREC.

162. The substation is made up of two 15,000 KW units. The Claimant contends that this means it has a total capacity of 30,000 KW. She originally contended that, of this total, 12,000 KW had been allocated to the Textile Company, 1,500 KW to the Wool Company and 500 KW to the Printing Company and sundry other uses. This would leave 16,000 KW available for sale. The 1979 Textile Company Minutes record that

> [the Textile Company] should also have access to 6000 kw electric power for running its two cotton mills, and another 6000kw as reserved in the second transformer of the sub-station. In case of damage or malfunctioning of one transformer [the Textile Company] will use the other to obtain the power, thus avoiding the loss of production.

163. The Claimant subsequently contended that the Textile Company was allocated only 6,000 KW, rather than 12,000 KW, so that WIG retained 22,000 KW for sale. The Claimant finally asserted that, of the Rls. 85 million the Textile Company paid

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[15] The Claimant concedes that the power company retained the right to charge customers for actual electricity consumption.

WIG for its connection, Rls. 60 million was for a 6,000 KW connection and the balance of Rls. 25 million was a "downpayment against the connection charge for the additional 6,000 KW that [the Textile Company] reserved for its future use." The Claimant alleged that if the Textile Company did not in fact make use of the further 6,000 KW, WIG was to refund it Rls. 25 million. She then assumed that 8,500 KW in total was reserved for the Textile Company. Given that 1,500 KW was reserved for the Wool Company and 500 KW for the Printing Company, that would leave a balance of 19,500 KW for sale.

164. The Respondent asserts that, because the Textile and Wool Companies paid most of the expenses of purchasing and installing the substation, the right to sell electricity belongs to them, not WIG.

165. The Respondent contends that the second transformer of 15,000 KW was held in reserve as a standby in case the first failed and that its capacity thus could not be sold separately. The total capacity available to WIG for sale would thus initially have been 15,000 KW rather than 30,000 KW.

166. In support, the Respondent submits an Agreement between WIG and the Textile Company. The Agreement first narrates that the Textile Company required 7000 KW of power and initially agreed to pay Rls. 50 million to WIG for this quantity of power. WIG in turn agreed to purchase a sub-station with capacity of 15,000 KW. However, WIG then learned from experts that it was necessary to purchase a second 15,000 KW transformer to act as a standby. WIG therefore purchased two 15,000 KW transformers. In light of this, WIG undertook in the Agreement to reserve 5000 KW of the second generator for the Textile Company and the Textile Company agreed to pay WIG a further Rls. 35 million. The Agreement is undated but its contents suggest that it was executed around the time of the transactions to which it refers.

167. If, in the alternative, WIG had a capacity of 30,000 KW to sell, the Respondent contends that it allocated 12,000 KW to

the Textile Company, 1,500 KW to the Wool Company and 500 KW to the Printing Company, leaving 16,000 KW available for sale. In support, the Respondent submits a letter from Dr. Kiaie and Dr. Miraftab to the Textile Company. Although the letter does not appear to bear a date, the Respondent alleges that it was written on 6 October 1979 and this has not been contested by the Claimant. In the letter, Dr. Kiaie and Dr. Miraftab write that

> [the Textile Company], in order to operate two yarn weaving plants, requires 600 [KW] of power. The West Regional Power Company charged . . . a total of Rls 95 million, to provide only 6000 [KW] of initial power to [the Textile Company]. It must also be said . . . in the event of . . . any technical problem in main transformer of the factories which were devoid of reserve power supply, their operations were totally halted. According to consent of the [Textile Company's] Board of Directors, Rls. 85 million were given to WIG to set up a private high voltage sub-station having two main transformers, and the Group set up a 24000 [KW] high voltage sub-station for the [Textile Company], wool weaving company, complex and printing press, thus the [Textile Company] having access to 12000 [KW] power instead of 6000 [KW] power. The [Textile Company] was required, for this amount of power, to pay Rls. 20 million in capital expenditures (excluding the power supply expenses) to the West Regional Power Company. However, under the present circumstances it has paid only Rls. 85 million, and has access to a totally reliable power source.

168. Touche Ross asserts that, if WIG did indeed have the right to sell connection fees, the Claimant must show proof of demand for electric power in the area, especially given the general economic crisis. Without such evidence, value of any transformation rights must be assumed to be negligible.

b. The Tribunal's decision

169. The Respondent does not deny that one of the companies at the site was given the right to charge the connection fee. However, it contends that, since the Textile and Wool Companies provided the major part of the funds for the construction of the

substation, those companies must have had the right to charge the fee. The Claimant contends that the payments by the Textile and Wool Companies were not made in consideration of obtaining an ownership interest in the substation but simply represented advances on the connection fees that they were to pay.

170. There is no evidence in the record to support the Respondent's contention that the Textile and Wool Companies acquired the right to charge the connection fees in consideration for the amounts debited to those companies for construction of the substation. In contrast, the Claimant's position that the two companies paid the funds as an advance on their own connection fees is supported by contemporaneous documentary evidence. The 1979 Textile Company Minutes describe the Textile Company as having "contributed [funds] toward the installment of the sub-station" and links that payment to the Rls. 10,000 connection fee. Similarly the October 1979 letter from Dr. Kiaie and Dr. Miraftab to the Textile Company describes the Textile Company as having made the funds available to WIG in return for WIG building the substation and allocating 12,000 KW of capacity to the Textile Company.

171. The Tribunal therefore finds that the payments made by the Textile and Wool Companies represented advance payments for connection fees and not the acquisition of an interest in the substation or of the right to charge further connection fees to other companies. WIG thus retained the right to charge connection fees.

172. The evidence establishes that the substation consisted of two 15,000 KW transformers. It is less clear whether one transformer was to be held in reserve, only being used in the event of failure by the other, or whether the two transformers ran simultaneously, so that a company wishing to have a reserve capacity simply had to buy allocations on both. While the evidence on this point is not conclusive, the Respondent has been in control of the substation since 1979 and was in a position to present evidence supporting its arguments about the capacity of

the substation. In the absence of any such evidence, the Tribunal concludes that a total capacity of 30,000 KW was available.

173. It is not contested that, of this 30,000 KW, 1,500 KW was reserved for the Wool Company and 500 KW for the Printing Company and sundry other uses. However, the Claimant contends that 8,500 KW was reserved for the Textile Company while the Respondents assert that 12,000 KW was reserved for that company. The Claimant's allegation that only 8,500 KW was reserved for the Textile Company contradicts her earlier statement that 12,000 KW was reserved for that company. It is, moreover, inconsistent with the contents of the Agreement between WIG and the Textile Company, the 1979 Minutes of the Textile Company and the 1979 letter written by Dr. Kiaie and Mr. Miraftab to the Textile Company, all of which indicate that 12,000 KW was reserved for the Textile Company.

174. The Claimant argues that the fact that the Textile Company paid only Rls. 85 million for its allocation proves that only 8,500 KW was reserved for it. Given that the connection fee was Rls. 10,000 per kilowatt, the Textile Company should in principle have paid Rls. 120 million to reserve 12,000 KW. The Claimant suggests that, for the Textile Company to reserve 12,000 KW in total, it would have had to pay WIG a further Rls. 35 million. However, the Agreement between WIG and the Textile Company, the 1979 Minutes of the Textile Company and the 1979 letter from Dr. Kiaie and Mr. Miraftab to the Textile Company all indicate that the Textile Company not only had reserved 12,000 KW, but had paid for that reservation in full. One may speculate as to why the Textile Company paid only Rls. 85 million, but in light of the above evidence and considerations the Tribunal concludes that 12,000 KW was reserved for the Textile Company and that the Textile Company had paid for that reservation in full.

175. As the capacity of the substation was 30,000 KW and WIG had allocated 12,000 KW for the Textile Company, 1,500 KW for the Wool Company and 500 KW for the Printing Company and sundry other

uses, WIG retained 16,000 KW of capacity for sale. At a fee of Rls. 10,000 per kilowatt, this represents potential revenue for WIG of Rls. 160,000,000.

176. There is no evidence that in 1979 there were any other customers for electricity from the substation. Moreover, the general economic conditions in Iran at the time would have been expected to delay the establishment of such customers at the site. The potential revenue from the connection fee must therefore be discounted to some extent to reflect the fact that it would be earned in the future. However, in determining the discount, it must be borne in mind that, based on the amount consumed by the existing companies, the construction of several more factories of reasonable size or the expansion of the existing factories may have been sufficient to enable WIG to sell much of the remaining capacity. In light of these considerations, the Tribunal considers it appropriate to reduce the present value to WIG of the revenue from the electricity connection fees by 20% to Rls. 128 million.

3. Shareholding in the Textile Company

a. Facts and contentions

177. The Textile Company was established in 1974. The Claimant alleges that it was created to develop textile industries in the region. It was owned by the Iranian and Polish Governments, as well as private investors -- including WIG, which purchased 11% of the shares (4,000 shares) for Rls. 40 million. The Polish Government, which was interested in the supply of textiles, allegedly invested U.S.$3 million in equity, lent U.S.$1.5m and gave U.S.$7.5m credit for the purchase of machinery from Poland. As of late 1977, one cotton spinning mill was almost complete and a second was under construction. The first mill was ready to go into production in January 1979 and the second mill was expected to begin operating in October 1979. The Claimant values WIG's interest in the Textile Company at the amount of its investment, Rls. 40 million.

178. Touche Ross asserts that "the cost of investments is not an appropriate measure of their market value at October 1980." The 1981 Audit Institution report recommended that the investment should be written off because of the "financial status" of the Textile Company. The Institution's report specified neither what that financial status was nor when it had arisen. The Respondent contends that WIG's investment in the Textile Company was worthless on the date of expropriation.

179. In response, Hemming Morse contends that the value of a long-term investment such as the shares in the Textile Company should only be written down if it is determined that, in light of all the relevant information, there is a non-temporary decline in its value. Furthermore, the value of the investment should only be reduced to the extent that the investment is worth less than the recorded cost. Hemming Morse points out that the Textile Company appears to have continued in operation at least until 1992, as the Respondent filed an affidavit dated in 1992 by one of the employees of the Textile Company.

b. The Tribunal's decision

180. For the reasons set out above (see para. 123, supra), evidence of the Textile Company's continuing existence in 1992 will be disregarded in valuing the Textile Company in 1979.

181. The evidence indicates that the Textile Company was an important joint venture involving investment by both the Polish and Iranian Governments. By early 1979 it was ready to commence operations and would have done so but for the Revolution. Evidence from Mr. Fatehi, a witness for the Respondent, indicates that it began operations soon after the Revolution.

182. The Audit Institution recommended in 1981 that WIG's investment in the Textile Company be written off because of the latter's "financial status" but did not give any details about

that status.[16] However, even if the Textile Company was in some form of financial difficulty in December 1981, there is no evidence that this was already the case in November 1979, which is the time at which WIG must be valued. The Respondent has not provided any further details on this matter, despite apparently being in a position to do so. Given the evidence of the Textile Company's vigor and advanced state of preparedness in 1979 and the lack of any evidence as to when it may have begun to experience difficulties or what those difficulties may have been, the Tribunal is not prepared to discount the value of WIG's shares due to such difficulties.

183. The Claimant only seeks to value WIG's shares in the Textile Company as equivalent to the amount WIG paid for them. The Tribunal has previously considered such an approach to be appropriate when valuing an interest in a company that was in an advanced state of preparation but was not yet operating on the date of expropriation. See Phelps Dodge, Award No. 217-99-2, para. 31 (19 Mar. 1986), 10 Iran-U.S. C.T.R. at 133. The Tribunal therefore values WIG's interest in the Textile Company as equal to its investment, Rls. 40 million.

4. Shareholding in the Wool Company

a. Facts and contentions

184. At the instigation of WIG, the Wool Company was established in 1975 to process woolen products. A wool factory for scouring, dyeing and spinning wool was under construction as of late 1977. The Iranian Government was an investor, allegedly

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[16] The fact that the company needed to raise money to begin operations and that it had been unable to obtain funds from shareholders in 1979 (as indicated in the 1979 Minutes of the Textile Company) does not establish that the company had long-term financial difficulties. It is normal commercial practice to borrow money as well as raise equity capital. It is understandable that WIG may not have been able to raise money from its shareholders, which included the Iranian Government, in early 1979.

purchasing 40% of the capital stock. WIG purchased 1,900 shares (19%) for Rls. 19 million (U.S.$271,429). The Claimant values WIG's shares in the Wool Company as equivalent to its investment of Rls. 19 million.

185. Touche Ross asserts that "the cost of investments is not an appropriate measure of their market value at October 1980." The 1981 Audit Institution report concluded that the investment should be written off because of the "financial status" of the Wool Company. The report does not contain any details about the financial status of the Wool Company. The Respondent contends that the activities of the Wool Company stopped in 1978 "due to financial shortage and inability in assuming necessary funds to repay them. Therefore the Company is considered as having incurred losses and being bankrupt."

186. In response, Hemming Morse objects to the recommendation that WIG's investment in the Wool Company be written off. It notes that the Wool Company apparently continues to operate, based on the fact that the Respondent submitted a recent affidavit by an employee.

b. The Tribunal's decision

187. The Wool Company was jointly owned by the Iranian Government and private investors and a factory was under construction in late 1977.

188. The Respondent alleges that activity at the company's site stopped in 1978 and that this indicates that the company was bankrupt. However, a cessation of activity at the site in 1978, if it occurred, would also be consistent with a short-term halt caused by the Revolutionary turmoil rather than bankruptcy. The Respondent has not provided any details or evidence supporting its allegations in this respect, despite apparently being in a position to do so. Neither does the 1981 Audit Institution report provide any details of the company's "financial status" or indicate what was the company's situation in 1979. Evidence

from Mr. Fatehi, in contrast, suggests that the company's plant began operating soon after the Revolution.

189. The Tribunal is therefore not persuaded that the value in 1979 of WIG's interest in the Wool Company had fallen below the level of its investment. For the reasons discussed above with respect to the Textile Company, the Tribunal values WIG's interest in the Wool Company as equal to its investment, Rls. 19 million.

5. Shareholding in the Printing Company

a. Facts and contentions

190. The Claimant alleges that the Printing Company was involved in several different types of projects with great commercial potential. First, it was to print Persian carpet designs for a carpet-making project. Second, it was to carry out commercial advertising, a service that was expected to be increasingly in demand as more goods were produced at the Industrial City. Third, it was to break into the monopoly for preparing and printing textbooks for elementary and secondary schools in the Western Region, held at the time by the Royal Organization for Social Services. Mr. Tavakoli, who had previously been Deputy Minister of Education, was considered to be particularly useful in the latter regard. The Claimant contends that prior to the Revolution the company had already obtained a contract with the University of Razi in Kermanshah and Boo-Ali University in Hamedan to print textbooks and instruction materials. WIG's Annual Report for the year ending 20 March 1977 refers to a "probable commitment" to guarantee "the Contract between [the Printing Company] and Nooriani Institute."

191. WIG owned 320 shares in the Printing Company, 9.1% of the stock, purchased for Rls. 3.2 million in 1977.[17] Allegedly the rest of the shares were owned by private individuals and businesses. As at September 1977, a plant for the Printing Company was expected to be operational by late 1977. The Claimant contends that, as a result of all of its different activities, the Printing Company was making enough money from its first year of operation to begin paying for the machinery it had bought on credit.

192. The Claimant contends that the Printing Company had quickly obtained a share of the publishing market in the region. For this reason, the Claimant says, in 1978 the Managing Director of the Royal Organization for Social Services offered to buy the printing shop for Rls. 100 or 120 million. Dr. Kiaie states that the company could not refuse to sell because the offeror was related to the Royal Family and had a monopoly, but instead made a counter-offer of the equivalent of U.S.$200,000. The Revolution occurred before the Organization could respond. On the basis of this offer, adjusted for inflation, the Claimant asserts that the Publishing Company was worth U.S.$1,933,750 in 1979. WIG's interest would then have been worth U.S.$212,030.

193. The Respondent challenges Dr. Kiaie's allegations that he received an offer to purchase the Printing Company and points out that there is no supporting evidence of this. The Respondent further contends that the Printing Company was, in any event, in an "improper financial position" in March 1979. It submits a letter to the Printing Company dated 3 March 1979 from the company's Managing Director, Akbar Rafie Tehrani, in support. In that letter, Mr. Tehrani states that he

> accepted this responsibility intending to make Kermanshah Printing House so profitable so that shareholders could make profits from their

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[17] The Claimant earlier alleged that WIG held 10% of the shares in the Printing Company, and then 20%. At the Hearing she corrected this to 9.1%, a figure that is supported by the documentary evidence.

> investment. However, this plan could not be implemented due to unfavourable circumstances. Therefore, I decided to resign so that the Company can adopt its own policy.

194. The 1981 Audit Institution report notes that it knew nothing about the financial state of the company, but that it appeared to have been taken over by a group called "Kermanshah Jehad Sazandegi." For this reason, the report considered that WIG's capital investment in the Printing Company should be written off. Touche Ross states that whatever value the Printing Company may have had must be discounted to reflect the unmarketability of the Printing Company's shares; the fact that WIG held a minority interest; and the general economic conditions.

b. The Tribunal's decision

195. Mr. Tehrani's letter to the Printing Company was written after the Revolution and during a period when most businesses in Iran had either come to a halt or were operating at reduced capacity. It thus does not establish that the Printing Company suffered from long-term unprofitability. The Respondent has not submitted any other evidence of the Printing Company's financial situation in 1979. The Tribunal is therefore not persuaded that WIG's interest in the Printing Company should be considered worthless.

196. The 1981 Audit Institution report does not state when the Printing Company was taken over by the "Kermanshah Jehad Sazandegi" and the Respondent has not submitted any explanations or evidence on this point nor on the identity of the named group and its relationship to the Government of Iran.[18] There is

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[18] Regarding attribution to the Government of revolutionary activities, see Claim of the United States Diplomatic and Consular Staff in Tehran, 1980, I.C.J. 3, 29, para. 58; Kenneth P. Yeager and Islamic Republic of Iran, Partial Award No. 324-10199-1, para. 35 (2 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 92, 101; Leonard and Mavis Daley and Islamic Republic of Iran, Award No. 360-10514-1, para. 20 (20 Apr. 1988), reprinted in 18

therefore no basis on which to conclude that, as of 26 November 1979, the company had been taken over, or was likely to be taken over, by a group for which the Government of Iran bore no responsibility.

197. The Claimant, on the other hand, seeks to value the Printing Company on the basis of an offer which was alleged to have been made for the company just prior to the Revolution. In the absence of any supporting evidence, the Tribunal concludes that the Claimant has not sufficiently proved the existence and details of that offer.

198. Touche Ross argued that any value ascribed to WIG's interest in the Printing Company should be discounted to allow for its alleged unmarketability and the fact that it was a minority shareholding. The Tribunal has previously held that, while such considerations may be relevant in valuing a shareholding for the purposes of sale on the open market, they have no application in the context of an expropriation. Birnbaum, Award No. 549-967-2, paras. 146-47 (6 July 1993), __ Iran-U.S. C.T.R. at __- __; Ebrahimi, Award No. 560-44/46/47-3, paras. 167, 170 (12 Oct. 1994), __ Iran-U.S. C.T.R. at __, __. The Tribunal sees no reason to depart from these holdings in the present Case.

199. In light of the above considerations, as well as those set out in para. 183, supra, the Tribunal assesses WIG's interest in the Printing Company in 1979 as equivalent to its investment of Rls. 3.2 million.

Iran-U.S. C.T.R. 232, 238; Protiva, Award No. 566-316-2 (14 July 1995), __ Iran-U.S. C.T.R. __.

6. Fees Receivable for Construction Work

a. Facts and contentions

200. WIG established a construction workshop with the appropriate machinery and personnel to replace outside contractors and it used this workshop to perform construction work for the Textile and Wool Companies. The Tribunal concluded above that WIG charged the Textile Company a fee of 6% for that work and that Rls. 15 million became payable on this account in 1979 (see para. 107, supra). That amount has been included in WIG's current assets; it will not be counted again here.

201. The Claimant alleges that WIG also charged the Wool Company a 6% fee. She asserts that construction of the Wool Company's factory cost U.S.$3 million so that WIG's 6% fee was worth U.S.$180,000. She implies that the construction was complete and the fee payable.

202. The Respondent challenges this claim for lack of evidence. Touche Ross also refers to the Audit Institution's recommendation that WIG's investment in the Wool Company be written down to zero and concludes that this suggests that there was "little, if any, likelihood of WIG collecting any monies owed to it" by the Wool Company.

203. Hemming Morse is of the opinion that "the continued operation of [the Wool Company's] factory provides a reasonable basis for the assumption that [the Wool Company] could generate the necessary funds to liquidate the construction fee payable to WIG."

b. The Tribunal's decision

204. In light of the fact that WIG charged the Textile Company a 6% fee, in the absence of any evidence to the contrary it is reasonable to assume that the Wool Company was also charged a 6% fee for construction supervision.

205. The Claimant contends that work on the Wool Company's factory cost U.S.$3 million. WIG's Auditor's report for the year ending 20 March 1978 includes an entry of Rls. 167,428,015 (approximately U.S.$2.4 million) received from the Wool Company in that financial year "to cover the capital expenses of the buildings." This amount appears to represent costs incurred by WIG in constructing the factory. The Minutes of a WIG Board Meeting held on 17 May 1978 record that, as of that date, the Wool Company factory was expected to be completed and delivered within five months. Construction thus continued after March 1978, and it is possible that WIG incurred further expenses for construction of the factory. However, the amount of such expenses is not in the record.

206. In light of the uncertainties associated with possible construction costs incurred after 20 March 1978, the Tribunal relies on the figure of Rls. 167,428,015 as representing the cost of the construction work performed by WIG for the Wool Company by 26 November 1979. WIG's 6% fee, based on this figure, was therefore Rls. 10,045,680.

207. For the reasons described above (see paras. 188-89, supra), the Tribunal is not persuaded that money owed to WIG by the Wool Company was not collectible in 1979. The Tribunal thus values the fees due to WIG from the Wool Company at their full amount of Rls. 10,045,680.

7. Fees for Future Construction Work

a. Facts and contentions

208. The Claimant contends that "WIG anticipated that it would supervise, over a five-year period, further construction projects (including pre-fabricated housing for laborers, managerial housing, textile and clothing factories, etc.), costing about $35 million U.S." WIG's 6% fee on this would have been U.S.$2.1 million. Hemming Morse calculates the expected profit on this projected fee, based on rates of profit of comparable United

States firms and deducting executive salaries, and it arrives at a figure of U.S.$392,700.[19]

209. The Respondent points out that the 1979 Textile Company Minutes indicate that the construction camp was sold to the Textile Company in 1979 and argues that WIG therefore cannot claim for further construction fees. Even if WIG retained the camp, Touche Ross contends that it would be necessary to critically evaluate how much work in fact would be carried out.

210. Hemming Morse asserts that, although the construction camp had been sold to the Textile Company, "it was still intended that WIG would provide supervision of those activities."

b. The Tribunal's decision

211. The Claimant has provided no evidence to substantiate her allegation that U.S.$35 million worth of building projects would have been supervised over the following 5 years by WIG. It is, moreover, difficult to understand how WIG could have carried out or supervised construction work after the sale in 1979 of its construction camp to the Textile Company. Even if the Textile Company were prepared to lend the camp to WIG for periods of time, it is not clear how WIG would expect to earn 6% fees using assets and personnel belonging to another entity. In any event, the fees appear not to have been earned at the time WIG was expropriated.

212. In light of these considerations, the Tribunal concludes that the Claimant has not met her burden of proving that an amount in respect for future construction fees should be included in WIG's value.

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[19] Hemming Morse does not calculate WIG's net profit on the construction fees charged to the Textile and Wool Companies, presumably because the expenses to generate those fees had already been incurred.

8. Apartment Building

a. Facts and contentions

213. The Claimant alleges that, in addition to residential accommodation included within the construction camp, WIG had begun construction of twin four-story apartment buildings in the northern, residential area of the site. According to the Claimant, these buildings were intended to house unmarried apprentice workers. Concrete foundations and iron bars were laid. With the commencement of the Revolution, working conditions became unsafe and funds harder to procure, and the work was stopped. The Claimant first alleged that WIG had spent U.S.$65,000 on the work, but subsequently increased this figure to U.S.$200,000.

214. Hemming Morse states that WIG was to operate the apartment building as a rental property, leasing rooms to employers in the Industrial City or directly to their skilled workers. Hemming Morse states that the building would therefore have been a profit-making venture, but that only the amount invested by WIG is claimed. It says that all the records are in the Respondent's possession.

215. The Respondent contends that the Claimant admitted that all of WIG's house-building projects were transferred to the Textile Company as part of the construction camp. For its part, Touche Ross notes that the Claimant stated that at the beginning of the Revolution the housing project was stopped. Touche Ross concludes from this that "whatever value arose to WIG on its expenditure on this project . . . was reduced to nil some considerable time before October 1980."

216. The 1981 Audit Institution report notes that in 1980 a sum of Rls. 41,484,366, apparently representing the costs of construction, was transferred in WIG's books from an account for "buildings under construction" to an account for "buildings." It notes too that the buildings are categorized in WIG's books

as: administrative, workers' housing, camp or storage. The report notes that all of the buildings had been utilized since their construction by the Textile and Wool Companies.

b. The Tribunal's decision

217. There is no documentary evidence that an apartment building existed on WIG's land separate from the construction camp. The Tribunal's concern in the face of this absence of proof is heightened by the fact that the Claimant significantly increased the amount that she claimed had been spent on the building without giving any explanation for this modification.

218. In light of these considerations, the Tribunal concludes that the Claimant has not met her burden of proving the existence and value of an incomplete apartment building separate from the construction camp.

9. Trees

a. Facts and contentions

219. The Claimant alleges that WIG started planting trees in 1975 in the southernmost area of the site. The trees were intended to be used for both landscaping and the generation of income through lumber sales. WIG allegedly planted 300,000 spruce, Oriental plane trees, cedar and poplar trees and planned to plant more. The Claimant contends that 90% of the trees were for commercial purposes and 10% for beautification. She further asserts that the types of trees planted grow fast and can be sold easily.

220. The Claimant alleges that in 1975 it was estimated that in 7 years (i.e., in 1982) the trees would be worth at least U.S.$10 each. The Claimant also contended that WIG had received offers for the trees of U.S.$5 to 7 just before the Revolution. Taking U.S.$6 as an average value per tree, she argued that the salable trees were worth U.S.$1,800,000. This appears to assume

that all 300,000 trees were for sale. In a later pleading, she asserted that WIG lost U.S.$800,000 as a result of the expropriation of WIG's tree planting project.

221. Hemming Morse performs an industry analysis which it claims establishes that a reasonable value for these trees in 1980 was U.S.$13 per tree. This analysis, it is contended, in turn proves the reasonableness of the Claimant's valuation of U.S.$10 per tree. At U.S.$10 each, 270,000 trees were worth U.S.$2,700,000.

222. The Respondent points out that the 1981 Audit Institution report indicates that WIG had invested only Rls. 1,605,318 (approximately U.S.$23,000) in the trees by the end of 1978. The Respondent claims that a comparison between this figure and the Claimant's assertions shows that the latter are groundless. Touche Ross contends that the low cost of acquisition of the trees suggests that they were seedlings at that time. On this basis, Touche Ross finds it "risible" to suppose that their value could rise to U.S.$10 per tree within 7 years.

223. Dr. Kiaie asserts that the cost of planting was low because WIG simply culled shoots from existing poplars in the forest.

224. The Fatehi report (of 1994), submitted by the Respondent, also values the trees. The Fatehi report notes that a nursery of 3.5 hectares had been planted at the WIG site. Of this, 2.5 hectares carried poplar, plane-trees and acacia. The report estimates that in 1979/80 the trees in this area were about 5 or 6 years old, which confirms the Claimant's assertions on this point. The report concludes that, "[g]iven the distance between the remaining trees, their number in the said year is estimated at about 25,000." Mr. Fatehi said that he based this figure on the assumption that one could not plant more than about 25,000 of this type of tree on 2.2 hectares. The report concludes that the total value of the trees in 1979/80 was about Rls. 1,250,000

(approximately U.S.$18,000), or Rls. 50 (approximately U.S.$0.71) per tree.

225. At the Hearing, Mr. Fatehi testified that there were also 400 fruit trees (apples, apricots, pears and peaches) at the site. He contended that they would have been worth a further Rls. 400,000 in 1979/80. He said that he believed that no fruit trees had been cut down between 1979 and 1994 because those that he saw were the correct distance apart from each other.

226. The 1981 Audit Institution report confirms that by 1981 the trees had reached "mature stages." The report records that "[t]he expenditures [recorded in the books for trees] are the prices paid for buying seeds, cutting, fertilizer and expenditures relevant to the nursery which [h]as been established on the grounds of the factory."

b. The Tribunal's decision

227. It is clear from the record that WIG planted trees in the mid-1970s. The Claimant consistently alleged that WIG planted 300,000 trees and that a large proportion of these were for commercial purposes. Mr. Fatehi indicated that no more than 25,400 trees could have been planted in that area. Neither the Claimant nor Mr. Fatehi provided the Tribunal with any documentary or photographic evidence that could have confirmed their respective statements.

228. Hemming Morse asserts that a value of U.S.$10 per tree is reasonable. However, the Claimant herself does not appear to have taken this position. While she contends that the trees would have been worth U.S.$10 each in 1981 or 1982, she proposes a value for the trees just prior to the Revolution of U.S.$6 each. At that price, 270,000 trees would have been worth U.S.$1,620,000. Elsewhere the Claimant stated that WIG had lost U.S.$800,000 by virtue of the expropriation of the trees.

229. Mr. Fatehi states that in 1979/80 the fruit trees at the site were worth Rls. 400,000 and the non-fruit-bearing trees Rls. 50 each, for a total of Rls. 1,650,000. This is approximately the same as the Rls. 1,605,318 which WIG had invested in the trees by that date. The Tribunal considers it implausible that 5 or 6 year-old trees would be worth only roughly the same as the amount spent on their purchase and upkeep.

230. In light of the uncertainties regarding the number and value of the trees in 1979, and bearing in mind the considerations set out in Birnbaum (see para. 145, supra), the Tribunal considers it fair and reasonable to value all of WIG's trees at U.S.$800,000 in 1979.

10. Contract for the Supply of Sugar Beets

a. Facts and contentions

231. The Claimant contends that from 1974 WIG grew beets on its site for Kermanshah Sugar Factory. WIG allegedly "proposed to supply the factory with sugar beets in the first five years, at a profit of U.S.$500,000 U.S. and increase sales 30% every year thereafter until 1983." The plan was cut short by the Revolution, but WIG's annual net profits from this activity nevertheless allegedly already exceeded U.S.$200,000. The Claimant alleges that this project was worth U.S.$500,000 to WIG.

232. Hemming Morse states that it has been informed by the Claimant that "actual negotiations had taken place with a local sugar factory and that a contract was close to being signed." It indicates that the U.S.$500,000 profit that the Claimant seeks is based on the sales price being negotiated with the factory, less anticipated costs. Hemming Morse acknowledges that the Claimant has no evidence of these negotiations other than an affidavit by Dr. Kiaie but notes that the Respondent has access to the records.

233. The Respondent denies that WIG was involved in sugar beet production. It contends that WIG's annual reports contain no reference to income earned through agricultural activities. Touche Ross argues that even if WIG did expect to generate revenue through the sale of beets, one has to discount it to take into account risk and expected inflation. Touche Ross also points out that the Claimant had said that the plan was cut short by the Revolution.

234. The 1981 Audit Institution report recorded that

> some of the land belonging to the Western Industrial Group which approximately amounts to 40 hectares was placed at the disposal of local farmers for farming beet. Also according to correspondences some other parts of the land (approximately 100 hectares) has been allocated according to decisions of the seven member council to another association who have already constructed some installation therein. The limit of allocation and the legal aspects of the decision made by the seven member council in view of protest lodged by the company to the proper authorities on the date of this report's draft is not clear for this institution.

235. Touche Ross maintains that this passage does not support the Claimant's allegation that WIG itself started a sugar beet planting project. The Respondent argues that the Claimant is seeking to attribute unauthorized activity by farmers to WIG, whereas WIG in fact protested those actions.

236. Dr. Kiaie asserts that after the Revolution the Respondent Government organized the beet production scheme among farmers in the area. Hemming Morse contends that the land referred to in the 1981 Audit Institution report was transferred to the farmers after WIG was expropriated. Hemming Morse notes, however, that the report confirms that the land was suitable for beet farming.

b. The Tribunal's decision

237. The Claimant's witnesses stated that the beet-growing activities described in the 1981 Audit Institution report only began after the expropriation of WIG and at the instigation of the new authorities. That report therefore does not prove that WIG was engaged in beet-growing prior to the date of expropriation.

238. The Claimant initially contended that WIG had grown beets at the site since 1974, making annual net profits of U.S.$200,000. Subsequently she stated that WIG proposed to supply beets to the sugar factory for five years at a profit of U.S.$500,000. The fact that the five year period was to conclude at least two years prior to 1983 suggests that this proposal was made before 1976, but the Claimant did not state whether the proposal was accepted nor specify a date. Finally, Hemming Morse states that the Claimant had instructed it that negotiations with the sugar factory were underway but were interrupted by the Revolution before a contract could be signed.

239. In light of the absence of evidence and the inconsistencies in the Claimant's own allegations, the Tribunal concludes that the Claimant has not met her burden of proving that WIG was engaged in a beet-growing venture prior to the date of expropriation.

11. Conclusion on the Value of WIG's Principal Assets

240. The Tribunal has determined that WIG's principal assets had the following values:

-	land:	Rls. 628,314,984
-	connection fees:	Rls. 128,000,000
-	Textile Company shares:	Rls. 40,000,000
-	Wool Company shares:	Rls. 19,000,000
-	Printing Company shares:	Rls. 3,200,000

-	construction fees receivable:	Rls. 10,045,680[20]
-	fees for future construction work:	0
-	apartment building:	0
-	trees:	U.S.$ 800,000
-	sugar beet project:	0
	Sub-total:	Rls. 828,560,664
	and	U.S.$ 800,000

To this amount must be added the net value of the balance of WIG's assets and liabilities. The Tribunal turns next to assess this value.

F. Net Value of the Balance of WIG's Assets and Liabilities

241. In ascertaining the net value of the rest of WIG's assets and liabilities, the Tribunal commences with WIG's Balance Sheet of 20 March 1980, as already modified to reflect comments on current assets and liabilities by the 1981 Audit Institution report and the Claimant (see para. 112, supra). This modified Balance Sheet shows WIG's assets and liabilities as follows:

current assets:	Rls. 83,696,673
current liabilities:	- Rls. 32,515,535
fixed assets:	Rls. 81,213,964
capital investments:	Rls. 62,305,000

242. However, the amounts on this Balance Sheet include values in respect of the principal assets that have been the subject of separate valuation above, as well as of assets that were transferred to the Textile Company in 1979 as part of the

[20] This amount relates solely to fees receivable from the Wool Company. A further Rls. 15 million, due from the Textile Company, has already been included in WIG's current assets (see paras. 107-08, supra).

construction camp.[21] These values must be excluded to avoid double counting or counting assets that were no longer owned by WIG on the relevant date. In addition, the 1981 Audit Institution report recommended that the figures for fixed assets and capital investments be reduced. These recommendations must also be considered. In light of these considerations, the Tribunal must:

- exclude from the modified Balance Sheet the book value of the principal assets that have been the subject of separate valuation above;

- exclude the book value of assets that were included in the construction camp; and

- assess the remaining recommendations made in the 1981 Audit Institution report and include those that are accepted.

243. *Fixed Assets*. The book value of WIG's fixed assets must be reduced by Rls. 24,466,893 (the recorded book values of the land, electric substation and trees) and then by a further Rls. 56,163,443 (the recorded book value of installations, buildings and building equipment, items that the Claimant largely concedes were transferred to the Textile Company as part of the construction camp).[22] Deducting these amounts from the book

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[21] The Tribunal has already assessed how the sale of the construction camp affected WIG's current assets and liabilities (see paras. 105, 108, supra).

[22] The Claimant concedes that all of WIG's installations and building equipment were transferred to the Textile Company. The Claimant concedes also that WIG transferred some of its buildings to the Textile Company but claims that WIG retained the apartment building discussed at paras. 213-18, supra. The Tribunal has concluded that the Claimant has failed to prove the existence and value of an apartment building (see para. 218, supra). Neither of the Parties has specified any other building owned by WIG which might have existed outside the construction camp. The Tribunal therefore concludes that there is no basis for retaining in WIG's books any amount in respect of buildings.

value of WIG's fixed assets leaves a book value of Rls. 583,628 in WIG's fixed asset account.

244. The Audit Institution Report recommended that WIG's fixed assets be further reduced by Rls. 6,629,428. Part of this amount relates to a ventilation and cooling system and the substation, items that have already been excluded from WIG's book value. The Tribunal is unable to ascertain what items are included in the balance of the recommended reduction amount. However, after the exclusion of assets valued previously or sold to the Textile Company, there remains only Rls. 583,628 in WIG's fixed asset account, relating to transport vehicles and tools. In the absence of any more specific evidence, and considering it probable that at least the tools would have formed part of the construction camp, the Tribunal reduces the value of WIG's fixed assets to zero.

245. *Capital Investments*. The book value of WIG's capital investments must be reduced by Rls. 62.2 million (the book value of WIG's shares in the Textile, Wool and Printing Companies), leaving Rls. 105,000 in respect of WIG's capital investments. This amount reflects WIG's interest in a company called Western Trading Company.

246. The 1981 Audit Institution report recommended writing off WIG's investment in Western Trading Company because the Institution at the time had no information about the company other than unspecified information that it had no activities. Writing off the value of the shares may have been a prudent accounting decision by the Institution in December 1981. However, no evidence has been provided on the basis of which the Tribunal could conclude that, as of 26 November 1979, the company had no value. The Tribunal therefore retains Rls. 105,000 in WIG's capital investment account.

247. In light of the above analysis, WIG's Balance Sheet -- modified to exclude assets already valued, to take into account the sale of the construction camp and to adjust for the further

recommendations in the 1981 Audit Institution report -- is as follows:

current assets:	Rls. 83,696,673
current liabilities:	- Rls. 32,515,535
fixed assets:	Rls. 0
capital investments:	Rls. 105,000
Sub-total:	Rls. 51,286,138

This amount of Rls. 51,286,138 represents the net value of WIG's remaining assets and liabilities. It must be added to the total value of the principal assets to determine the total value of WIG.

G. Conclusion on Compensation

248. The Tribunal has found that, as of 26 November 1979, the value of WIG's principal assets was Rls. 828,560,664 plus U.S.$800,000 (see para. 240, supra) and the net value of the balance of WIG's assets and liabilities was Rls. 51,286,138 (see para. 247, supra). WIG's total value was therefore Rls. 879,846,802 plus U.S.$800,000.

249. Based on the foregoing, the Tribunal determines that the Claimant Vivian Tavakoli is entitled to Rls. 24,899,664 plus U.S.$22,640 as compensation for the expropriation by the Respondent of her 170 shares in WIG, representing a 2.83% ownership interest. Rls. 24,899,664 is equivalent to U.S.$353,312 converted at the exchange rate of 70.475 Rials/U.S.$1, the exchange rate prevailing during all of 1979. See Ebrahimi, Award No. 560-44/46/47-3, para. 175 (12 Oct. 1994), __ Iran-U.S. C.T.R. at __; Petrolane, Inc., et al. and Government of the Islamic Republic of Iran, et al., Award No. 518-131-2, para. 147 (14 Aug. 1991), reprinted in 27 Iran-U.S. C.T.R. 64, 115. The Claimant Vivian Tavakoli is thus entitled to the aggregate amount of U.S.$375,952.

VII. INTEREST

250. In order to compensate the Claimant Vivian Tavakoli for the loss she has suffered due to delayed payment, the Tribunal considers it fair to award simple interest at the rate of 8.1%, the average rate of interest paid on six-month certificates of deposit in the United States from 26 November 1979, the date of the expropriation, until the present. See Sylvania Technical Systems, Inc. and Government of the Islamic Republic of Iran, Award No. 180-64-1, at 30-34 (27 June 1985), reprinted in 8 Iran-U.S. C.T.R. 298, 320-22 ("Sylvania").

VIII. COSTS

251. In view of Article 38, paragraph 1, and Article 40, paragraphs 1 and 2, of the Tribunal Rules and the criteria for the award of legal fees and expenses established in Sylvania, Award No. 180-64-1, at 35-37 (27 June 1985), 8 Iran-U.S. C.T.R. at 323-24, the Tribunal finds it reasonable to award the Claimant Vivian Tavakoli legal fees and expenses in the amount of U.S.$10,000.

IX. AWARD

252. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

a) The Claims of JAMSHID DAVID TAVAKOLI and KEYVAN ANTHONY TAVAKOLI against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN are dismissed for lack of jurisdiction.

b) The Respondent, THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, is obligated to pay the Claimant, VIVIAN MAI TAVAKOLI, three hundred and seventy five thousand nine hundred and fifty two United States dollars

(U.S.$375,952), plus simple interest at the rate of 8.1% per annum (365-day basis) from 26 November 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment out of the Security Account.

c) The Respondent, THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, is obligated to pay the Claimant, VIVIAN MAI TAVAKOLI, ten thousand United States dollars (U.S.$10,000) in respect of her costs of arbitration.

d) The above-stated obligations shall be satisfied by payment out of the Security Account established pursuant to Paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria of 19 January 1981.

This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague
23 April 1997

Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God

Richard C. Allison

Concurring and Dissenting Opinion

Mohsen Aghahosseini

Concurring in the dismissal of the claims of Jamshid David Tavakoli and Keyvan Anthony Tavakoli. Dissenting to the admission and valuation of the claim submitted by Vivian Mai Tavakoli.