

$$1\Lambda - 1\Lambda^F$$

Case No. 18

Date of filing: 13 Oct 86

- Date _____

_____ pages in English _____ pages in Farsi

183

CASE NO. 18

CHAMBER ONE

AWARD No. 260-18-1

PEPSICO, INC.,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,
FOUNDATION FOR THE OPPRESSED,
ZAMZAM BOTTLING COMPANY AZARBAIJAN,
ZAMZAM BOTTLING COMPANY EAST TEHRAN,
ZAMZAM BOTTLING COMPANY ESFAHAN,
ZAMZAM BOTTLING COMPANY GORGAN,
ZAMZAM BOTTLING COMPANY KERMAN,
ZAMZAM BOTTLING COMPANY KERMANSHAH,
ZAMZAM BOTTLING COMPANY KHUZESTAN,
ZAMZAM BOTTLING COMPANY MASHHAD,
ZAMZAM BOTTLING COMPANY RASHT,
ZAMZAM BOTTLING COMPANY SHIRAZ,
ZAMZAM BOTTLING COMPANY TEHRAN,
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه دآوری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	13 OCT 1986 ۱۳۶۵ / ۷ / ۲۱
No.	18

AWARD

Appearances:

For the Claimant: Mr. E. R. Leahy, Attorney,
 Mr. F. McRobie,
 Mr. H. Sassine, Representatives

For the Respondents: Mr. M. K. Eshragh, Agent of the
 Government of the Islamic Republic of
 Iran,
 Mr. M. Kazazi, Legal Adviser to the
 Agent,
 Mr. M. Madadi, Representative of the
 Foundation for the Oppressed,
 Mr. M. R. Montazeri,
 Mr. M. Shahverdi, Representatives of
 the Zamzam Bottling Companies

Also present: Mr. J. Crook, Agent of the United
 States of America,
 Mr. D. Price, Adviser to the Agent.

The claims in this Case arise out of transactions between the Claimant PEPSICO, INC. ("PepsiCo") and eleven Iranian bottling companies, all of which include the word "Zamzam" in their corporate names. Specifically, these eleven corporations are: ZAMZAM BOTTLING COMPANY AZARBAIJAN, ZAMZAM BOTTLING COMPANY EAST TEHRAN, ZAMZAM BOTTLING COMPANY ESFAHAN, ZAMZAM BOTTLING COMPANY GORGAN, ZAMZAM BOTTLING COMPANY KERMAN, ZAMZAM BOTTLING COMPANY KERMANSHAH, ZAMZAM BOTTLING COMPANY KHUZESTAN, ZAMZAM BOTTLING COMPANY MASHHAD, ZAMZAM BOTTLING COMPANY RASHT, ZAMZAM BOTTLING COMPANY SHIRAZ, ZAMZAM BOTTLING COMPANY TEHRAN. (These eleven companies are referred to herein as the "Zamzam Companies".)

The claims are of two types. PepsiCo seeks payment of \$3,348,000 for accounts receivable for Pepsi-Cola soft drink concentrate allegedly sold and delivered to all of the Zamzam Companies except Zamzam Bottling Company Kerman. (The ten companies against which claims are made for payment of accounts receivable are referred to herein as the "purchasing Zamzam Companies".) In addition, PepsiCo seeks repayment of loans of \$6,500,000 that it allegedly made to all of the Zamzam Companies except Zamzam Bottling Company Tehran. (In view of the Tribunal's finding on the claim for repayment of loans, the ten companies against which claims are made for such repayment are referred to herein as the "borrowing Zamzam Companies.")

PepsiCo asserts that the Government of the Islamic Republic of Iran and the Foundation for the Oppressed, as well as the respective Zamzam Companies, are jointly and severally liable with respect to the claims.

The Zamzam Companies have raised counterclaims for the amount of alleged overpricing of the concentrate sold to them.¹

I. FACTS AND CONTENTIONS

1. Jurisdiction

PepsiCo asserts that it is a United States national. The Respondents are the Government of the Islamic Republic of Iran, the Foundation for the Oppressed and the Zamzam

¹The purchasing Zamzam Companies had also brought a counterclaim seeking five percent of the price of the concentrate sold, allegedly owed as "aid towards publicity". By Order filed on 7 June 1984, the Tribunal decided not to allow this counterclaim, considering the stage of the proceedings at which it was made.

Companies. The Claimant contends that the Foundation for the Oppressed is an entity controlled by the Government of Iran. The Claimant also contends that, in carrying out orders of the Government, the Foundation for the Oppressed took the shares of the Zamzam Companies and that the Government, through the Foundation for the Oppressed, continues to control de facto those companies.

Initially, the Claimant sought payment of \$3,348,000 for Pepsi-Cola concentrate by way of a direct claim based on contractual arrangements with the purchasing Zamzam Companies. Later, it asserted this claim as an indirect claim on behalf of its allegedly wholly-owned subsidiaries Pepsi-Cola Manufacturing (Ireland) Ltd. ("PepsiCo Ireland") and Pepsi-Cola Manufacturing Co., Inc. ("PepsiCo Puerto Rico"), two companies incorporated in Ireland and Delaware, respectively. The Claimant then contended that in March 1979 it had secured the assignment of the accounts receivable from its two subsidiaries, and that it was therefore entitled to claim them also in its own right.

The Respondents have raised a number of jurisdictional objections. They argue that the Claimant has not submitted sufficient proof of its United States nationality in accordance with the requirements of the Claims Settlement Declaration. They deny that the Foundation for the Oppressed is an entity controlled by the Government of Iran, but rather assert that it is a private, charitable organization with a separate legal entity. They also deny that the Zamzam Companies are controlled by the Foundation for the Oppressed in the sense of Article VII, paragraph 3, of the Claims Settlement Declaration. Rather, they assert that these Companies are private commercial companies with separate legal entities in which the Foundation acts only as an ordinary shareholder. The Respondents argue that any control of the Foundation over the Zamzam Companies would be so indirect as not to fulfill the requirements of Article VII, paragraph 3. Furthermore, the

Respondents assert that, because "the situs of the Agreements invoked by the Claimant is Iran, and in practice the contracts were performed in Iran", disputes over their performance are within the sole jurisdiction of Iranian courts.

The Zamzam Companies dispute that the Claimant is entitled to bring the claim for payment of concentrate on behalf of PepsiCo Ireland and PepsiCo Puerto Rico because it has in their view not proved its ownership of these two companies. The Zamzam Companies also deny that the Claimant can bring a direct claim. They contend that all the transactions took place directly between them and PepsiCo Ireland and PepsiCo Puerto Rico. With regard to the alleged assignments, the Zamzam Companies contend that they only cover part of the claim, and that, in any event, the Tribunal should not take them into account because they were presented at such a late stage of the proceedings.

With regard to the claim for repayment of the loans, the Respondents have raised the same jurisdictional objections made against the claim for accounts receivable. In addition, they argue that the claim for repayment of the loans was not outstanding on 19 January 1981 as required by Article II, paragraph 1, of the Claims Settlement Declaration because their alleged acceleration was not justified and repayment did not become due until 15 May 1982.

2. Merits

a) The claim for accounts receivable

The Claimant states that in 1955 it entered into an Exclusive Bottling Appointment with the then Zamzam Bottling Company of Iran ("Zamzam Iran"). Under this Appointment, the Claimant gave Zamzam Iran the exclusive right to purchase, bottle, sell and distribute Pepsi-Cola within Iran. The Claimant and Zamzam Iran operated under this Appointment until 1977.

In 1977, eleven regional bottling plants, the Zamzam Companies, were established in various cities in Iran, and on 1 March 1977 the Claimant entered into an Exclusive Bottling Appointment ("Appointment") with each of these Zamzam Companies. Under those Appointments the Zamzam Companies obtained the exclusive right to purchase concentrate and to bottle, sell and distribute Pepsi-Cola in designated territories. They undertook to comply with certain sanitary and other requirements in connection with the production, sale and marketing of Pepsi-Cola, and the Claimant undertook to assist them in this. Specifically, each Appointment provided that the Claimant would "sell or cause to be sold by one of its subsidiaries (hereinafter called the Seller)" to each Zamzam Company, and the Zamzam Company would buy from the Claimant or the Seller, units of Pepsi-Cola concentrate "at a price established by the Seller from time to time". "Payment in full for each order" would be made by the Zamzam Company "immediately upon delivery or on such other terms as the [Claimant] or the Seller may from time to time specify".

The Claimant asserts that during the period 1978 to 1979 each of the purchasing Zamzam Companies ordered and received concentrate from PepsiCo Ireland and PepsiCo Puerto Rico and that the agreed upon price of all these shipments totalled \$3,348,000. The Claimant asserts that the purchasing Zamzam Companies received these shipments, but did not pay the \$3,348,000. The Claimant has described the procedures involved in shipping the concentrate and in effectuating its payment after it received an order from a purchasing Zamzam Company. It has also submitted evidence relating to the offer and acceptance of the sales and shipment of the concentrates together with copies of specimen drafts and instructions for collection sent to Bank Saderat. During oral proceedings the representative of the purchasing Zamzam Companies confirmed that there was no dispute about receipt, but only about the price to be paid. While it has invoked the drafts totalling \$3,348,000 as evidence of its claim and for the purpose of

calculating the relevant due dates, the Claimant bases its claim not on these drafts, but rather on the Appointments and on the shipment and receipt of the concentrate by the purchasing Zamzam Companies.

The aggregate claim for the allegedly unpaid price of Pepsi-Cola concentrate totals \$3,348,000. The Claimant seeks from each of the ten purchasing Zamzam Companies the portion of this amount which corresponds to the price of concentrate that was shipped to and received by the respective Company. Since the Government of Iran and the Foundation for the Oppressed have allegedly confiscated the Zamzam Companies, the Claimant seeks to hold them, along with the ten purchasing Zamzam Companies, jointly and severally liable with respect to each such portion of this claim.

The Claimant contends that on 20 April 1979 it gave notice to each Zamzam Company demanding payment of the price for the concentrate. The Claimant asserts that in a letter dated 15 January 1980 Mr. Tabatabaie, the managing director of Zamzam Company Tehran and chairman of the board of directors of all other Zamzam Companies appointed by the Foundation for the Oppressed, acknowledged the Zamzam Companies' obligation to pay the total concentrate price of \$3,348,000. The Claimant further contends that during meetings in late 1979 and in 1980 the Foundation for the Oppressed also acknowledged the validity of this claim.

The Claimant seeks interest on the amount of each draft from its due date until payment of the award.

The purchasing Zamzam Companies assert that the drafts representing the amounts sought were never accepted by them and that a number of formalities required by the Geneva Convention of 1930 had not been fulfilled. In addition, they state that the letters of 20 April 1979 which demanded payment for the concentrate were not sent to or received by the respective

purchasing Zamzam Company. Rather, these letters were addressed to each of the ten purchasing Zamzam Companies, marked to the attention of Mr. Iradj Sabet, the chairman of the board of each Company, and sent to him in Paris. Furthermore, the purchasing Zamzam Companies contend that the Claimant had since 1974 overcharged them for purchases of concentrate by 100 percent and that therefore any amounts which they might owe the Claimant must be offset by this overcharge. The Claimant denies this contention. Furthermore, the purchasing Zamzam Companies argue that in any event they could not pay for the concentrate because Executive Order No. 12170 issued by the President of the United States of America on 14 November 1979 created force majeure conditions with respect to the availability of United States Dollars.

As regards the acceptance by the purchasing Zamzam Companies of their obligations to pay for the concentrates expressed in Mr. Tabatabaie's letter dated 15 January 1980, they submit that this cannot be invoked because that letter was transmitted during settlement negotiations between the Parties and because it suffered from formal deficiencies.

Since there was no provision made in the drafts for payment of interest, the purchasing Zamzam Companies argue that according to the Geneva Convention no interest may be awarded. It also submits that the contracts between the Parties contain no provisions with respect to interest.

The Government of Iran and the Foundation for the Oppressed deny any liability for payment for the concentrate.

b) The claim for repayment of the loans

The Claimant also seeks a total of \$6,500,000 as repayment of the loans to the borrowing Zamzam Companies.

The Claimant asserts that in 1977 it extended to each of the Zamzam Companies, except Zamzam Tehran, a loan of \$650,000 which was to be used to make plant improvements, to provide working capital and to pay certain debts relating to the purchase of concentrates and various other obligations. According to the Claimant, the loans were evidenced by three sets of documents: a "Main Agreement" among PepsiCo, each of the ten borrowing Zamzam Companies, shareholders and three personal guarantors; ten individual "Loan Agreements" between PepsiCo and each of the ten borrowing Zamzam Companies, which were attached to the Main Agreement; and ten individual "Promissory Notes" made payable to PepsiCo and executed by each of the ten borrowing Zamzam Companies, which were also attached as an Exhibit to the Main Agreement. The Claimant argues that a specific choice of law clause contained in these documents provides that New York law governs and that, according to New York law, the documents constitute a single agreement.

The Main Agreement, signed on 16 June 1977, provided that PepsiCo was not required to implement the loans until certain conditions precedent had been met. The Claimant contends that all of these conditions were met, and that thereupon the loans were made. The Claimant further contends that the Main Agreement required the borrowing Zamzam Companies to satisfy certain requirements after the loans were made and that if such requirements were not satisfied then the Claimant had the right to accelerate the maturity of any or all of the Promissory Notes.

The Claimant asserts that the Loan Agreements, also signed on 16 June 1977, required each of the ten borrowing Zamzam Companies to comply with certain financial and production-related conditions, violation of any of which by any of the ten borrowing Zamzam Companies entitled the Claimant to accelerate the maturity of the Promissory Notes so that they became due and payable ten days after written notice was sent

to the other party and confirmed by telex. Pursuant to the Loan Agreements, these loans would otherwise mature on 15 May 1982 and would be interest-free unless the loans were not paid at that time or were accelerated earlier.

The Claimant contends that each of the ten Promissory Notes was signed on 15 May 1977 by Iradj Sabet in his capacity as chairman of the board of each Zamzam Company, obligating each of the ten borrowing Companies to repay the Claimant \$650,000 on 15 May 1982. The Promissory Notes contained a secondary, independent and personal guarantee by Habib Sabet, Iradj Sabet and Hormoz Sabet to repay the loans, which in the Claimant's view did not affect the principal obligation of the ten borrowing Zamzam Companies under the Agreements.

The Claimant asserts that it caused the funds loaned to be transferred into the accounts of each of the ten borrowing Zamzam Companies on 2 June 1977, 15 July 1977 and 2 August 1977 respectively, and that the loans were received by the Companies.

The Claimant contends that beginning in August 1977 the Zamzam Companies violated quality control requirements and other terms of the Main Agreement and of the Loan Agreements. It warned that it would accelerate the maturity of the loans, and after unsuccessful attempts to ensure compliance with the Agreements the Claimant on 20 April 1979 accelerated the maturity of the Promissory Notes and demanded payment of \$650,000 from each of the ten borrowing Zamzam Companies. The Claimant contends that under the terms of the Loan Agreements payment of the \$6,500,000 thus became due on 30 April 1979, and that it was never paid this amount. The Claimant states that it continued to sell concentrate to Zamzam Companies in Iran into 1981, but beginning in 1979 did so only by confirmed letters of credit.

The Claimant seeks interest on the \$6,500,000 at 3 percent above the three-month London Inter Bank Offered Rate (LIBOR) from 30 April 1979 until payment of the award. The Claimant argues that it is entitled to interest at this rate because this was provided for in the Loan Agreements if the loans were not repaid when due.

The Claimant asserts that the Government of Iran and the Foundation for the Oppressed are together with the ten borrowing Zamzam Companies jointly and severally liable for repayment of each of the loans owed by the respective Zamzam Companies. This argument is based on the facts that the Loan Agreements specifically provide that they are binding on successors and that the Government and the Foundation for the Oppressed both are "successors to all of the interests of the former Zamzam owners". The Claimant argues that the Government and the Foundation for the Oppressed are also liable on the basis of the guarantees executed by the Sabets. In the Claimant's view, when the Sabets' assets were confiscated and transferred to the Foundation, it also assumed responsibility for their liabilities, among which were those guarantees.

As to the merits of this claim, the central contention of the Zamzam Companies is that these loans were personal loans to the Sabet family and were not intended for the corporate use of the ten borrowing Zamzam Companies, and that therefore neither these ten Zamzam Companies nor the Government of Iran nor the Foundation for the Oppressed are responsible for their payment. The Zamzam Companies assert that this is shown by the following: that the provisions and spirit of the Main Agreement indicated that the nature of the loans was personal, not corporate; that there were no authorizations from the borrowing Zamzam Companies for the Sabets to conclude the loan contracts; that Habib, Iradj and Hormoz Sabet signed the Main Agreement only as guarantors, not representing the ten borrowing Zamzam Companies; that the letters by which the Claimant purported to accelerate repayment of the loans were not sent

to the ten borrowing Zamzam Companies in Iran, but rather to Iradj Sabet in Paris; and that the Claimant sued the Sabets in a United States court for repayment of the loans, but later withdrew that suit with their agreement. The Zamzam Companies further allege that they could not be bound by the Agreements because contrary to the Companies' charters the Agreements were signed by one director rather than two authorized signatories, and that the necessary authorizations from the boards of directors and company seals were missing. These defects could not be remedied by any theory of "apparent" authority. The Promissory Notes were only signed by Iradj Sabet personally, and according to the Geneva Convention a claim could thus only be made against him. The Promissory Notes had also not been protested. Based on all the above, the Zamzam Companies suggest that the loans were a "conspiracy" of the Claimant and the Sabets, and the present claim was brought in collusion with them.

The Zamzam Companies further contend that the loan proceeds were not received by them and were not entered into their books, but that they were rather paid to Zamzam Central Company, which had been dissolved in 1978. The Zamzam Companies presented a statement of Agahan Auditing Firm, formerly known as Coopers & Lybrand, Iran, that the loans were not reflected in the books of the one Zamzam Company audited and that "[n]o evidence, records, documents or written notes exist to indicate that Coopers and Lybrand Auditing Firm knew that a loan of 6.5 Million Dollars was paid by PepsiCo Inc. to other companies of Zamzam groups". Parts of the proceeds of the loans were transferred to two other companies not Respondents in this Case, but allegedly owned by the Sabets.

With regard to the acceleration letters of 20 April 1979, the Zamzam Companies assert that these were not sent, as required, to each borrowing Zamzam Company, nor were they received by it. Rather, the letters were addressed to each borrowing Zamzam Company, marked to the attention of Mr. Iradj Sabet and

sent to the personal address of members of the Sabet family in Paris. The post return receipts are not signed by Iradj Sabet, and it is not known whether the letters were actually received by the addressees in Iran. Further, the Zamzam Companies question whether the letters submitted in evidence were actually contained in the envelopes for which return receipts were given.

The Zamzam Companies also argue that they did not breach any obligations under the Agreements and that there was therefore no justification to accelerate repayment of the loans. Finally, the Zamzam Companies argue that they would not be liable because their liability is limited to the value of their shares, which was negative when those shares were transferred to the Foundation for the Oppressed.

The Government of Iran and the Foundation for the Oppressed deny any liability for this claim.

The Claimant replies to the Respondents' defences as follows. It asserts that the loans were granted to the ten borrowing Zamzam Companies which were the primary obligors, and that under applicable New York law Habib, Iradj and Hormoz Sabet had only undertaken a secondary obligation to guarantee the loans. The doctrine of "apparent" authority would under New York law, as well as under Iranian law and general principles of law, have vested Iradj Sabet with authority to bind the ten borrowing Zamzam Companies. Furthermore, even if there were technical problems with the signing of the Main Agreement and the Loan Agreements, the Zamzam Companies would nonetheless be responsible for the loans under the doctrine of ratification by having retained the benefits of those Agreements. As to whether the loans were entered in the books of the ten borrowing Zamzam Companies, the Claimant presented an affidavit of the former managing partner of Coopers & Lybrand, Iran that the loan was reflected in the books of the one Zamzam Company audited and "[a]lthough Coopers & Lybrand did not audit the

financial statements of the remaining nine ZamZam Bottling companies in Iran, the firm was aware that a similar loan had been granted by PepsiCo, Inc. to each of the ZamZam companies, and that the loans amounted, in total, to U.S. \$6.5 million". As regards the lawsuit brought by the Claimant against the Sabets in the United States, the Claimant asserts that it was withdrawn because it was discovered that hardly any assets of the Sabets were available there, and their signature was required to obtain a dismissal without prejudice. However, by proceeding against the guarantors PepsiCo had not waived its right to proceed against the ten borrowing Zamzam Companies as primary obligors of the loans.

Furthermore, the Claimant denies that any "conspiracy" existed. It states that no loans had been made to Zamzam Central Company which is not a Respondent in the present Case. It also asserts that the application of parts of the loan proceeds to pay the ten borrowing Zamzam Companies' debts owed to two companies that were also owned by the Sabets was provided for in the Agreements and did not make the loans personal loans to members of the Sabet family. Finally, the Claimant asserts that, by giving actual notice to the chairman of the board of the ten borrowing Zamzam Companies, it gave effective notice of the acceleration of the maturity of the loans to each Company in compliance with applicable New York law.

c) The counterclaim

Together with the Statement of Defence, the Zamzam Companies filed a counterclaim against PepsiCo for alleged overcharges in the price at which PepsiCo sold concentrate during the period 1974 into 1979. The counterclaim, in the amount of \$12,400,000, is alleged to arise out of the whole contractual relationship between the Zamzam Companies and the Claimant upon which the claim itself is founded. The Zamzam Companies assert that the Claimant charged them excessive prices for concentrate since 1974, thereby inflicting damages on them in

the amount sought in this counterclaim. In their view, the overcharging is evidenced by the fact that prior to 1979 the Claimant charged \$310 per unit of concentrate, whereas after the Islamic Revolution it sold the concentrate at a price of only \$155 per unit. The \$155 price was the market price, which the Zamzam Companies see not only confirmed by the fact that they purchased other comparable concentrate at a lower price from other suppliers, but also by a written declaration on the Claimant's invoices stating that the \$155 represented the "actual export market value price". The Zamzam Companies argue that by overcharging them the Claimant engaged in unconscionable trade practices, violated equity principles in international trade and unjustly enriched itself.

The Zamzam Companies seek interest on the \$12,400,000 "in the event the Tribunal should award interest".

The Claimant denies that the Tribunal has jurisdiction over the Zamzam Companies' counterclaim. It argues that the counterclaim relates to the delivery of concentrate prior to mid-1978 for which the Claimant was paid, and not to the delivery of the unpaid concentrate upon which the claim for accounts receivable is based. The deliveries on which the counterclaim is based are therefore different and separate transactions from those that are the ground of the claim. The Claimant asserts that even if the Tribunal has jurisdiction over this counterclaim, \$310 per unit of concentrate was a fair market price. The Claimant explains the disparity between the unit price before and after the Islamic Revolution by stating that the price of \$155 was "imposed" by the new Government in 1979, and that it had no choice but to accept this price if it did not want to lose the Iranian market. The Zamzam Companies deny this, asserting that the Claimant made a voluntary business decision after the Revolution in Iran to sell concentrate at \$155 per unit.

With regard to the representation on certain invoices that \$155 was the "actual export market value price", the Claimant asserts that this accurately signifies PepsiCo's assurance, for the purpose of establishing customs duty, that the price so stated was the price actually charged for the particular shipments involved.

The Claimant finally argues that even under Iranian law the Zamzam Companies could not pursue this counterclaim because the option to rescind the transaction, the only remedy in case of alleged overcharges, must be exercised within one year. Furthermore, it argues that the Zamzam Companies waived any rights to complain by accepting and using the concentrate sold at \$310 per unit without objections. The Zamzam Companies dispute both arguments and assert that, the Claimant having brought the principal claim, they can now bring the counterclaim, even if that counterclaim might by itself have been time-barred under Iranian law.

d) Costs

All Parties request costs.

3. Procedural Issues

a) Requests to reject certain submissions of the Zamzam Companies and to supplement the claim for costs

On 16 August 1984, the Claimant filed a submission commenting on the Zamzam Companies' 1 August 1984 submission, in which it requested the Tribunal to reject material in the 1 August 1984 submission that in the Claimant's view was "beyond the scope of the Tribunal's June 7, 1984 Order". In the same submission, the Claimant also supplemented its claim for costs through the date of the Hearing, for which supplement it had requested leave in its Memorandum summarizing its case before the Hearing. In its comments filed on 10 October 1984 on the

Claimant's submission, Zamzam objected to this supplement as being a new relief of "imaginary damages" and that they were "untimely" and not supported by evidence.

b) Requests concerning the increase of the rate of interest

In its Memorandum summarizing its case before the Hearing, filed on 31 January 1984, the Claimant increased the rate of interest sought on the concentrate receivables from 6 to 12 percent, requesting the Tribunal "to treat the calculation of this revised rate of interest as an amendment to its claim, if necessary". In its Memorandum summarizing its defences before the Hearing, filed on 4 May 1984, Zamzam objected to the increase of the rate of interest sought. At the Hearing, both Parties repeated their requests in this respect and the Tribunal decided to postpone for the time being its decision on the admissibility of the increase of the interest rate.

c) Request to stay decision on the Claimant's United States nationality

At the Hearing, the Government of Iran requested the Tribunal to defer its decision on the Claimant's United States nationality until after the Full Tribunal's decision in Case No. A20.

d) Request to stay decision on interest

In their Memorandum summarizing their defences before the Hearing, and at the Hearing, the Zamzam Companies requested the Tribunal to defer its decision on the claim for interest until after the Full Tribunal's decision in Case No. A19.

e) Requests for the appointment of experts

The Zamzam Companies have requested the Tribunal to appoint experts to ascertain the following: (i) the fair market

price of the concentrate sold; (ii) whether the Promissory Notes with regard to the loans were reflected in the books of the borrowing Zamzam Companies, unless the Tribunal itself determines that they were not so entered; (iii) the value of the shares of the Zamzam Companies on the date of their transfer to the Foundation for the Oppressed, unless the Tribunal itself determines that such value was negative; and (iv) whether the Claimant's "statutory books and fiscal reports" for the fiscal years 1979 and 1980 included provisions for reserves concerning the loans.

f) Requests for the production of documents

The Zamzam Companies allege that the Claimant has already recovered the loans from the Sabets. "In order to throw light on the subject in every respect", they have requested that the Claimant present its "commercial registers and balance sheet from 1979 to date to the court so that Respondent could examine them".

The Zamzam Companies have further requested that the Claimant submit the originals of various of the documents it has submitted in photocopy.

The Zamzam Companies have also requested that the Claimant submit correct Farsi translations of a number of documents submitted by it.

II. REASONS FOR AWARD

1. Procedural Issues

a) Request to reject certain submissions

The Tribunal admits all documents submitted by the Parties during the course of the proceedings since none were such as to cause any prejudice.

b) Requests to stay decisions

The Tribunal notes that, since the time the Respondents made their request to stay a decision on the Claimant's nationality until after the Full Tribunal's decision in Case No. A20, this decision has been rendered. See Case No. A20, Decision No. DEC 45-A20-FT (10 July 1986). Thus, the Respondents' request is now moot.

The Tribunal denies the Respondents' request for a stay of its decision on whether and in what amount interest is owed until after the Full Tribunal's decision in Case No. A19. This is in conformity with the Tribunal's practice on this issue.

c) Requests for production of documents and for appointment of experts

The Tribunal finds sufficient evidence in the record to form a basis for deciding both the claims for payment of the accounts receivable for shipments of concentrate and for repayment of the loans.

With regard to the Respondents' request to appoint an expert to determine the value of the shares of the Zamzam Companies, the Tribunal finds that the Respondents have not sufficiently explained or substantiated that request. In support of their allegations that they are not liable for the loans because any liability they might have would be limited to the value of their shares in the Zamzam Companies, and that the value of such shares was negative on the date they were transferred to the Foundation for the Oppressed, the Respondents submitted an affidavit of the auditor of the Foundation for the Oppressed Accounting Institute. However, this quite general affidavit, the English version of which was filed only one day before the Hearing in this Case, related to only one of the Zamzam Companies and was unsupported by any financial statements or specific analysis. The Tribunal finds that this evidence is

inadequate to support the Respondents' allegations and does not form a sufficient basis to warrant appointment of an expert. Furthermore, the Respondents have not pursued or offered further evidence in support of these allegations. In view of the foregoing, the Tribunal does not have to reach the issue of the relevance of the value of the shares or of the Zamzam Companies.

Accordingly, the Tribunal finds that there is no need to grant the request for appointment of an expert, or for production of further documents.

d) Increase of interest and supplement of costs claim

The Tribunal admits the Claimant's requests to increase the rate of interest initially sought by it as well as to up-date the amount of its claim for costs, since both of these requests affect only the amounts of calculations and as such do not prejudice the defence by the Respondents.

2. Jurisdiction

a) The Claimant's United States nationality

Based on the evidence submitted by the Claimant, the Tribunal is satisfied that the Claimant is a national of the United States within the meaning of Article VII, paragraph 1, of the Claims Settlement Declaration pursuant to the standards set forth in Flexi-Van Leasing, Inc. and Islamic Republic of Iran, Case No. 36 (Order of 20 December 1982) and General Motors Corp. and Government of the Islamic Republic of Iran, Case No. 94 (Order of 21 January 1983). See also Case No. A20, Decision No. DEC 45-A20-FT (10 July 1986).

b) Ownership of the claims

The Claimant brings the claim for payment of the Promissory

Notes as a direct claim, based on its own contractual arrangements with the ten borrowing Zamzam Companies. The Claimant's ownership of this claim is not disputed.

The matter is different with regard to the claim for accounts receivable. The Claimant seeks, by way of indirect claims on behalf of its wholly-owned subsidiaries PepsiCo Ireland and PepsiCo Puerto Rico, payment of the price of Pepsi-Cola concentrate sold and delivered. The evidence shows that PepsiCo Puerto Rico is in fact a wholly-owned subsidiary of the Claimant incorporated in the State of Delaware, and as such could have brought claims relating to concentrate delivered by it in its own name. The Claimant would therefore pursuant to Article VII, paragraph 2, of the Claims Settlement Declaration not be entitled to bring such portion of the claim related to PepsiCo Puerto Rico as an indirect claim. On 27 March 1979, however, PepsiCo Puerto Rico assigned this claim to the Claimant, and the Claimant was therefore from that time on entitled to bring this claim in its own right. From the date on which it arose until 27 March 1979, this claim was owned by the Claimant through its ownership of PepsiCo Puerto Rico, and from 27 March 1979 on it was owned directly by the Claimant. The requirement of continuous ownership of the claim by nationals of the United States within the meaning of Article VII, paragraph 2 of the Claims Settlement Declaration is thus fulfilled.²

The part of the claim that relates to concentrate delivered by PepsiCo Ireland is also in the first place brought by the Claimant as an indirect claim. Since PepsiCo Ireland as a company incorporated in Ireland is not entitled to claim in

²See Harza and Islamic Republic of Iran, Award No. 232-97-2, para. 22 (2 May 1986) ("Article VII, paragraph 2 requires continuity of Claimants' nationality, not continuity of Claimants' identity, and it requires such continuity '... from the date on which the claim arose to [19 January 1981] ...'".)

its own name, the Claimant may through its 100 percent ownership bring this claim indirectly under Article VII, paragraph 2, of the Claims Settlement Declaration.

PepsiCo Ireland also assigned on 27 March 1979 part of its claim for the price of concentrate delivered to the Claimant, thus making PepsiCo the direct owner of such assigned claim as of that date. The assignment did not cover all the amounts contained in the Claimant's present claim, however. The relatively small portion of the claim not covered by the assignment of PepsiCo Ireland is thus before the Tribunal as an indirect claim by the Claimant on behalf of its Irish subsidiary.

c) The Respondents

The Tribunal has previously held that the Foundation for the Oppressed is an instrumentality controlled by the Government of Iran and thus is within the Tribunal's jurisdiction. See Hyatt International Corporation and Government of the Islamic Republic of Iran, Award No. ITL 54-134-1, pp. 23-31 (17 Sept. 1985). While the Respondents do not deny that the Foundation for the Oppressed owns shares of the Zamzam Companies, they assert that each of the Companies is a private commercial company with a separate legal entity in regard to which the Foundation exercises only functions of an ordinary shareholder. With respect to this question, the Tribunal notes that in a letter to the General Prosecutor of the Court of the Islamic Revolution dated 29 April 1979 the Director of the Foundation for the Oppressed stated that in "the letter No. 203 dated [11 April 1979], the General Prosecutor communicated to us the decision of the Court of the Islamic Revolution to the effect that the Sabet Pasal Company was to be expropriated". The Foundation's letter continues that "[s]ince we are informed that Mr. Habib Sabet is a shareholder in various corporations and in addition also owns many properties and real estate it

is therefore requested that you notify us in writing whether the said decision is exclusively applicable to the Sabet Pasal Company or whether it applies to all the personal assets, cash in local and foreign banks, real properties and shares in the said corporations. And also, please describe in detail the scope of authority of this Foundation with regard to the expropriation of the assets of the above-mentioned persons". On 6 May 1979, the General Prosecutor wrote to the Director of the Foundation for the Oppressed that "[i]n connection with the companies in which Mr. Habib Sabet has small amounts or are not in his name and are in the name of close relations of his, it is hereby ordered that those too are part of the expropriated assets and your Foundation is obligated to act accordingly". On 7 May 1979, the General Prosecutor, in answer to the Foundation's letter of 29 April 1979, confirmed that "it is hereby announced that by all the properties of Mr. Habib Sabet we mean all the properties of Mr. Habib Sabet of the Sabet Group and his kin of the first degree in any way or form". On the same day, the Head of the Confiscated Properties Organisation Committee of the Foundation for the Oppressed issued a notice of confiscation stating that "the properties belonging to Sabet's family according to the orders issued has been confiscated, and is going to be managed under the control of this organisation". On 30 May 1979, the Foundation for the Oppressed appointed Mr. Payani as temporary managing director for the Zamzam Company Tehran and as chairman of the board of directors of all other Zamzam Companies in Iran. On 12 June 1979, Mr. Payani informed the Claimant in a telex that "[a]s of May 30th 1979 and per [decision] of the Revolutionary [Court] of the Islamic Republic of Iran all the assets of Habib Sabet and family have been taken over by the Mostazafan Foundation". On 1 September 1979, the Foundation for the Oppressed appointed Mr. Tabatabaie to replace Mr. Payani in his functions for the Zamzam Companies. In a letter to the Claimant of 15 January 1980, Mr. Tabatabaie, informing the Claimant of the Zamzam group's interest to negotiate a new bottling appointment, stated that "[t]he official documents

confirming the establishment of the Mostazafan Foundation and its confiscation of all Zam Zam Plants in Iran have been given to your office in Tehran".

For the purpose of determining its jurisdiction, the Tribunal concludes from this evidence that the Foundation for the Oppressed has brought the Zamzam Companies under governmental control within the meaning of Article VII, paragraph 3, of the Claims Settlement Declaration. See Foremost Tehran, Inc. and Government of the Islamic Republic of Iran, Award No. 220-37/231-1, pp. 20-21 (11 April 1986), where the Tribunal held that "majority share ownership and control of the board establish" control within the meaning of Article VII, paragraph 3, of the Claims Settlement Declaration.

d) Forum exclusion

The contracts at issue in the present case do not contain specific provisions referring disputes thereunder to the sole jurisdiction of the competent Iranian courts. Therefore, the Tribunal's jurisdiction is not excluded pursuant to Article II, paragraph 1, of the Claims Settlement Declaration.

e) Claim for repayment of the loans

Under Article II, paragraph 1, of the Claims Settlement Declaration, this Tribunal has jurisdiction only over claims which were outstanding on 19 January 1981, the date the Declaration came into force. The ten Promissory Notes on which the Claimant bases its claim for an aggregate amount of \$6,500,000 state that their maturity date is 15 May 1982 -- some sixteen months after the Tribunal's jurisdictional deadline. The Tribunal would, therefore, have no jurisdiction over a claim based on non-payment of the Promissory Notes unless their maturity had been validly accelerated so that they became payable on or before 19 January 1981. The Claimant asserts that it properly accelerated the maturity of

the Promissory Notes because, inter alia, the Zamzam Companies failed to maintain quality control standards and to pay timely invoices for concentrate as required by the Main Agreement and Loan Agreements. The Claimant contends that as a result the Promissory Notes became due and owing on 30 April 1979, and because they were not paid a claim was outstanding on 19 January 1981. The Respondents, on the other hand, contend, inter alia, that no valid acceleration occurred, and that the Tribunal thus lacks jurisdiction over any claim with respect to the Promissory Notes.

The Main Agreement and the Loan Agreements gave the Claimant the right to accelerate the maturity of the Promissory Notes if any one of several events occurred. With respect to the Claimant's argument that the Zamzam Companies violated required quality control standards, Paragraph 3(b) of the Main Agreement states that the Claimant has the right to accelerate the maturity of any of the Promissory Notes if it is satisfied that the following condition is not met:

"The Guarantors, the [borrowing Zamzam Companies], the [Zamzam Companies] and the Stockholders shall take immediate steps to guarantee that all PepsiCo soft drinks produced by the various bottling plant facilities meet and maintain all quality control standards of PepsiCo without deviation as prescribed in Exhibit E."

Similarly, each Loan Agreement reiterates the Claimant's right to accelerate if "the Borrower or any of the other [Zamzam] Companies engaged in the PepsiCola business in Iran" failed to fulfill the condition that "all PepsiCo soft drinks meet and maintain all quality control standards for Pepsi-Cola without deviation". These provisions were apparently designed to maintain the quality of PepsiCo's products sold under its widely-known trade name.

The evidence does not support the Claimant's assertion that it accelerated the Promissory Notes because of the failure by any of the Zamzam Companies to maintain proper quality control

standards. The Claimant presented in evidence copies of several communications from it to various Zamzam Companies calling attention to quality control problems at several of the bottling plants, and also presented copies of internal correspondence and reports within the PepsiCo organization concerning quality control problems. These communications covered the period from August 1977 through July 1978. They described the particular problems of specific bottling facilities, made suggestions for rectifying the difficulties and offered the Claimant's assistance in correcting the situation. The last such document, a letter dated 24 July 1978 addressed to Iradj Sabet, Zamzam Company, Tehran, confirmed a meeting held on that day and the day before during which representatives of the Claimant and the Zamzam Companies discussed "the quality of Pepsi-Cola beverages produced in Zam Zam Bottling plants" and at which the Claimant agreed to provide four quality control engineers to hold training seminars and provide technical assistance. The letter expressed confidence that these joint efforts "will lead to the high quality Pepsi-Cola beverage expected by consumers throughout the world".

So far as the record before us shows, it appears that the confidence that the Claimant expressed in its 24 July 1978 letter was not misplaced, for there are no documents after that date that indicate continuance of any quality control problems. The Tribunal also considers it significant that the Claimant continued to sell concentrate to the Zamzam Companies until 1981, but since 1979 only by confirmed letters of credit, although it had the right under the Appointments to refuse to make such sales if it considered that proper quality control standards were not being maintained. Thus, the Tribunal finds that the Claimant has not borne the burden of proving the existence of quality control problems in April 1979 and that therefore this ground may not support the Claimant's acceleration.

With respect to the Claimant's argument that the Zamzam Companies failed to pay timely invoices for concentrate, Paragraph 3(f) of the Main Agreement states that "Paragraph 4 contained herein shall be a Condition of Performance", thereby entitling the Claimant to accelerate the maturity of the Promissory Notes if this Paragraph is not satisfied. Paragraph 4 of the Main Agreement includes a provision that:

"All payments for concentrate during the term of this Agreement shall be made not more than one hundred eighty (180) days after arrival at the port of destination."

Thus, failure to pay invoices for concentrate for more than 180 days after arrival at the port of destination gave the Claimant the right to accelerate.

The evidence supports the Claimant's argument that it had grounds to accelerate because of the Zamzam Companies' failure to satisfy the requirements set forth in Paragraphs 3(f) and 4 of the Main Agreement. The Claimant presented in evidence a letter dated 7 June 1978 from PepsiCo to Iradj, Habib and Hormoz Sabet. In this letter, PepsiCo demanded payment for invoices overdue as of 7 June 1978 and reminded the Sabets that unless this was done the Zamzam Companies would be in violation of Paragraph 3(f) of the Main Agreement, thereby entitling PepsiCo to accelerate. In particular, PepsiCo stated:

"A breach of this magnitude is of a most serious nature and places in jeopardy the Main Agreement and Loan Agreements executed by you and your Companies."

This letter concluded with PepsiCo warning that it would exercise its rights under the Main Agreement and Loan Agreements if the then outstanding invoices were not paid within 15 days. These invoices were apparently paid since there is no further mention of them in the record and since the Claimant has made no claim for them.

In its acceleration letters of 20 April 1979, the Claimant referred to Paragraph 4 of the Main Agreement as a basis for acceleration. In addition to notifying each borrowing Zamzam Company of its decision to accelerate the maturity of the respective Promissory Note and making its demand for payment thereof, the Claimant further demanded payment of invoices overdue since August 1978 and invoked Paragraph 4 as its ground for doing so.

The Tribunal concludes, in light of its finding in Section 3a) below, that when the Claimant demanded acceleration on 20 April 1979 each invoice involved in this Case was unpaid for more than 180 days after the concentrate's arrival at its port of destination.³ Although the Claimant did not offer evidence which showed the exact date of arrival at the port of destination of each shipment of concentrate, the Claimant did submit in evidence various "Billing Data Sheets" or other documents for each invoice which indicate the date of shipment of the concentrate. Assuming that the concentrate arrived at its port of destination in Iran 30 days after its date of shipment, then each invoice involved in this Case was unpaid for more than 180 days after its arrival at its port of destination as of 20 April 1979. Indeed, even assuming that the concentrate arrived at its port of destination in Iran 60 days after its date of shipment, then all but four invoices were unpaid for more than 180 days as of 20 April 1979. Thus, the Tribunal finds that when the Claimant demanded acceleration on 20 April 1979, the Zamzam Companies were in breach of Paragraphs 3(f) and 4 of the Main Agreement, thereby entitling the Claimant to accelerate.

³The Tribunal notes that the due date for payment for concentrate pursuant to Paragraph 4 of the Main Agreement is different from the specified due date referred to in Section 3a)iii) below which is used to calculate interest. In essence, the former due date relates to the arrival date of the concentrate whereas the latter due date relates to the date payment for such concentrate became due.

Finally, the Tribunal finds that the Claimant satisfactorily complied with the notice provisions contained in the Loan Agreement relating to acceleration. The Claimant has submitted in evidence each of its acceleration letters of 20 April 1979. These letters are addressed to each of the borrowing Zamzam Companies, marked to the attention of Iradj Sabet, the chairman of the board of each Company, and sent to him by registered mail in Paris and New York. The Tribunal has before it evidence indicating that the letters addressed to Paris were mailed on 20 April 1979 and, while the postmark relating to the letters addressed to New York is indistinct, the Tribunal considers it reasonable to assume that these letters likewise were mailed on the date they were written. The Claimant has also submitted in evidence a confirming telegram also dated 20 April 1979. This telegram, which is addressed to Iradj Sabet and was sent to his New York City address, states that the Claimant had elected to accelerate the maturity of the Promissory Notes for each borrowing Zamzam Company (which were individually listed in the telegram) and accordingly demanded payment of \$6,500,000. The Claimant argues that, by giving actual notice to the chairman of the board of each Zamzam Company, it gave effective notice of the acceleration to each Company in compliance with applicable New York law which, according to their terms, governed the Loan Agreements "in all respects". Thus, the Claimant argues that it satisfied the notice provisions of the Loan Agreements.

The Zamzam Companies contend that the Claimant's acceleration was invalid because the Claimant failed to provide notice as required by the Loan Agreements. In particular, the Zamzam Companies contend that the acceleration letters of 20 April 1979 were not sent to the borrowing Zamzam Companies in Iran, but rather to Iradj Sabet in Paris. The Zamzam Companies also contend that the Claimant has not proved that Iradj Sabet signed the post return receipts for these letters, that these letters were actually received by the Companies in Iran or

that the letters were actually contained in the envelope for which return receipts were given.

Paragraph 8 of each Loan Agreement states that if the borrowing Zamzam Company or any other Zamzam Company violates any condition of the Loan Agreement:

"[T]hen, in any such event, the unpaid principal amount of the Promissory Note shall then, immediately after written notice by registered mail to the [borrowing Zamzam Company] and confirmed by telex, become due and payable, without presentment demand, protest or other notice of any kind, all of which are hereby expressly waived"

Also, Paragraph 6 of each Loan Agreement provides that:

"Notices relating to the loan will be effective within ten (10) days after they have been sent in writing by Registered Mail to the other party and confirmed by telex."

The Tribunal finds that the Claimant satisfied these notice provisions. To begin with, these notice provisions do not require that notice be sent to the Zamzam Companies in Iran. Rather, the Tribunal notes that under New York law, which governed the Loan Agreements, notice to a high-ranking corporate officer is effective notice to the corporation. See, e.g., Schoenbaum v. Firstbrook, 405 F.2d 200 (2d Cir. 1968); N.Y. Civ. Prac. Law § 311.1. The Tribunal further notes that Iradj Sabet, the person who signed each of the Promissory Notes as chairman of the board, apparently continued to serve as chairman of the board of each Company as of 20 April 1979 and therefore, in the Tribunal's view, he was entitled to receive effective notice on each Company's behalf. The earliest indication in the record that the Foundation for the Oppressed was clearly to take control over the Zamzam Companies is the 6 May 1979 letter from the General Prosecutor of the Court of the Islamic Revolution to the Director of the Foundation referred to in Section 2c) above. Until this date, there is no evidence that Iradj Sabet had ceased to be an

officer of the Zamzam Companies. Indeed, the Respondents have not alleged that Iradj Sabet was no longer an officer of the Zamzam Companies as of 20 April 1979. Registered mail receipts in evidence show deliveries to Iradj Sabet's addresses in Paris and New York, and there is no reason for the Tribunal to doubt that these receipts relate to the notices of acceleration, as the Claimant contends. Thus, based on the entire record before it, the Tribunal is satisfied that the Claimant provided notice to Iradj Sabet in accordance with the notice provisions of the Loan Agreements, that he received such notice, and that he was entitled to receive them on behalf of the Zamzam Companies.

Based on the above, the Tribunal concludes that the Claimant had sufficient grounds to accelerate the maturity date of each Promissory Note, that an effective acceleration occurred on 20 April 1979 and that the maturity date of each Promissory Note was accordingly accelerated to 30 April 1979. Thus, the Claimant's claim for payment of the Promissory Notes was outstanding as of 19 January 1981 in accordance with Article II, paragraph 1, of the Claims Settlement Declaration.

3. Merits

a) The claim for accounts receivable

The claims against the purchasing Zamzam Companies for payment of shipments of concentrate are based on the purchase of such concentrate by these Companies and its shipment and delivery to them. The Claimant seeks from each of the purchasing Zamzam Companies the amount of the unpaid price of the shipments made to that Company. The procedures for shipping the concentrate and effectuating its payment, as asserted by the Claimant and not contested by the Zamzam Companies, were as follows. After receiving a purchase order from a Zamzam Company, the respective PepsiCo Company prepared an invoice, a

draft and certain other documentation. It gave the bill of lading, which it received from the shipper upon delivery of the concentrate to the port of embarkation, as well as the invoice and the draft to its bank with the instruction to forward the documents to Bank Saderat for acceptance and collection.

While the Claimant invokes the drafts as evidence for the amounts claimed and the due dates, it bases its claims not on the drafts, but rather on the purchase orders and the shipment and receipt of the concentrate by the ten purchasing Zamzam Companies. As noted, during the oral proceedings the representative of the Zamzam Companies confirmed that there was no dispute about receipt, but only about the price to be paid. Thus, the Zamzam Companies' denial of acceptance of the drafts is not relevant to the basis of this claim. As to the shipments for which it seeks payment, the Claimant has submitted copies of the purchase order, the acceptance of that order, the invoice, the draft made out in the name of the respective Zamzam Company, together with bank instructions, billing data sheets and bills of lading. While such documentation is not complete for each and every shipment, it is given in most instances. As further evidence of the amounts claimed the Claimant relies on the 20 April 1979 letters addressed to the borrowing Zamzam Companies and sent to Iradj Sabet in Paris, demanding payment of the amount owed for concentrate. The Zamzam Companies have denied that they accepted any drafts, and they assert that the 20 April 1979 letters having been sent to Iradj Sabet in Paris were not received by the Zamzam Companies in Iran. Apart from these denials and the counter-claim for overcharging, they have not, however, dealt with any of the details of the Claimant's accounts receivable documentation.

Moreover, correspondence indicates that the purchasing Zamzam Companies had acknowledged their obligations to pay for the concentrate. A letter of 15 January 1980 to PepsiCo from Mr.

Tabatabaie who was, as noted above, then an authorized representative of the Zamzam Companies states:

"Following our discussions pertaining to the outstanding debts between PepsiCo Inc, and Zam Zam Bottling Companies. In my capacity as Managing Director of ZZBCo, I acknowledge, in principle, Zam Zam's obligation to repay the concentrate portion of the debts, amounting to approx. \$3.5 MM."

The Tribunal finds that this letter is admissible as a normal business communication acknowledging the current status of outstanding accounts, and that it is not, as the Zamzam Companies contend, an offer of settlement that the Tribunal must ignore.⁴

Based on this evidence and the above-described documentation on the accounts receivable, the Tribunal is satisfied that the PepsiCo companies sold and delivered concentrate as stated in the claim. Furthermore, the Tribunal finds that the purchasing Zamzam Companies have not sufficiently explained or substantiated their assertions that, in any event, they could not pay for the concentrate because Executive Order No. 12170 of the President of the United States created force majeure conditions with respect to the availability of United States Dollars.

i) The price of the concentrate

The Tribunal has found no evidence in the record that would establish any overcharging by the Claimant. The Tribunal

⁴ In contrast, the Tribunal determines that the Minutes of a meeting on 6 September 1981 and the Claimant's subsequent letter of 14 October 1981, both submitted by the Zamzam Companies, reflect negotiation of settlement terms and are therefore inadmissible as evidence.

notes that the price of \$310 per unit was accepted by the Zamzam Companies for a number of years. When the purchasers came under new management following the Islamic Revolution, there apparently was insistence that the price be reduced to \$155 per unit. The fact that the Claimant then reduced the price does not demonstrate that the earlier price was not a fair market price. The Tribunal accepts PepsiCo's explanation that it made a business decision to sell for the time being at the lower price since the alternative in the then prevailing circumstances was to give up a market it had developed over a long period. Nor is the Tribunal convinced by the Respondents' argument that the fact that invoices for sales made after the Revolution at \$155 per unit state that the \$155 represented the "actual export market value price" indicates that the \$310 price on earlier sales constituted overcharging. The statements on the \$155 invoices were accurate and reflect the changed market conditions at the time of those sales. Finally, the Tribunal finds no evidence in the record before it to support allegations that the Claimant engaged in unconscionable trade practices, violated equity principles in international trade or unjustly enriched itself.

ii) The amounts due for concentrate

It follows from the above that the prices for the concentrate stated on the Claimant's invoices and shown on the drafts were not unreasonable and reflect the amounts actually due. The Claimant has given the following breakdown of the total price of the shipments to each purchasing Zamzam Company:

Zamzam Company Azarbaijan	\$248,000
Zamzam Company East Tehran	217,000
Zamzam Company Esfahan	124,000
Zamzam Company Gorgan	31,000
Zamzam Company Kermanshah	155,000

Zamzam Company Khuzestan	310,000
Zamzam Company Mashhad	186,000
Zamzam Company Rasht	248,000
Zamzam Company Shiraz	558,000
Zamzam Company Tehran	1,271,000
Total	\$ 3,348,000

iii) Interest

The Claimant seeks interest on the above receivables from the specified due dates. The Appointments provided for payment immediately upon delivery or on such other terms as specified by the Claimant. While the drafts and Appointments contain no provisions as to interest, the Tribunal, in accordance with its practice, sees no reason why interest should not be paid. The Tribunal also finds that the specified due dates should apply. The Tribunal considers it reasonable to award the Claimant simple interest at the rate of 10 percent per annum. Interest is thus calculated at the rate of 10 percent per annum on the price of each shipment, starting from the due date up to and including 19 May 1979, which is the day before the last due date. From 20 May 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account interest is calculated at the rate of 10 percent per annum on the total principal amount owed by each Zamzam Company.

b) The claim for repayment of the loans

The Claimant seeks \$650,000 from each of the ten borrowing Zamzam Companies (i.e., a total of \$6,500,000) as repayment of the loans to the borrowing Zamzam Companies. As noted in Section 2e) above, the Tribunal has found that the Claimant had a ground under the Main Agreement to accelerate on 20 April 1979, that the Claimant properly accelerated on that date and that each of the Promissory Notes thereby became due

and owing on 30 April 1979. Furthermore, there is no dispute that each Promissory Note was for \$650,000.

The Zamzam Companies, however, argue that, even assuming a valid acceleration and adherence to the terms of the Main Agreement and Loan Agreements, this claim for repayment of the loans should be denied. The Zamzam Companies' main argument is that the loans were actually personal loans to the Sabet family rather than corporate loans to the borrowing Zamzam Companies, and that therefore none of the Respondents are liable for their repayment. The Zamzam Companies make several arguments which they assert lead to the conclusion that these loans were intended for the personal use of the Sabet family. In particular, they contend the letter and the spirit of the Main Agreement indicate the personal nature of the loans; that the Sabets had no authorization from the Companies to conclude these Agreements; that Habib, Iraqj and Hormoz Sabet signed the Main Agreement only as guarantors and not on behalf of the Companies; that the loans were not entered in the books of the borrowing Companies; that the loan proceeds were never received by the Companies but were instead paid to Zamzam Central Company which is not a respondent in this Case and which was dissolved in 1978; that pursuant to the Main Agreement parts of the loan proceeds were transferred to two other companies owned by the Sabets to retire certain debts; and that the Claimant sued the Sabets in a United States court for repayment of the loans, but later withdrew that suit with the Sabets' agreement. According to the Zamzam Companies, these arguments taken together suggest a "conspiracy" between PepsiCo and the Sabets.

The Claimant argues that the loans were strictly corporate loans to the borrowing Zamzam Companies. It submitted in evidence a series of telexes dated between 28 March 1977 and 16 June 1977 which demonstrate that each Zamzam Companies' board of directors passed resolutions empowering the Companies

to obtain the loan from the Claimant and authorizing Iradj Sabet, as chairman of the board of each Company, to sign the Agreements on behalf of each Company. In particular, the Claimant submitted a telex dated 24 May 1977 from PepsiCo's legal counsel to PepsiCo's area counsel stating that such a signed resolution was received in order from each company, along with the signed Agreements and other relevant documents. These telexes also indicate that the resolutions and other documents were placed in the Claimant's safe in Tehran in June 1977. The Claimant states, however, that it has not had access to these materials since the Islamic Revolution. Furthermore, the Claimant argues that the loans were granted to the borrowing Zamzam Companies which were the primary obligors, and that under applicable New York law Habib, Iradj and Hormoz Sabet had only undertaken a secondary obligation to guarantee the loans. In addition, the Claimant presented an affidavit of the former managing partner of Coopers & Lybrand, Iran that the loan was reflected in the books of the one Company it audited, Zamzam Bottling Company East Tehran, and that he was aware that a similar loan had been granted to other Zamzam Companies amounting to \$6,500,000 in total. Also, the Claimant submitted various documents indicating that between 2 June 1977 and 2 August 1977 it transferred a total of \$6,500,000 from its account with Dresdner Bank in New York to Bank Saderat Iran's account at Chase Manhattan Bank with directions to Bank Saderat to deposit that amount in equal shares into specifically designated accounts of each borrowing Zamzam Company. The Claimant further states that no loan was made to Zamzam Central Company, that no proof of any such loan has been offered and that in any event Zamzam Central Company is not a respondent in this Case. The Claimant also argues that the application of parts of the loan proceeds to pay the borrowing Zamzam Companies' debts owed to two companies that were also owned by the Sabets was provided for in the Agreements and did not make the loans in any way personal loans. Finally, with regard to the lawsuit brought by the Claimant against the Sabets in the United States, the Claimant

asserts that this lawsuit was withdrawn because it discovered that hardly any assets of the Sabets remained in the United States, and the Sabets' consent was required to obtain a dismissal without prejudice. In any event, by proceeding against the individual guarantors, the Claimant had not waived its right to proceed against the borrowing Zamzam Companies as the primary obligors of the loans.

Based on the above-described evidence and the record before it, the Tribunal finds that the loans by the Claimant to each borrowing Zamzam Company were made to those corporations. The Tribunal does not find sufficient evidence to support the allegation that these loans -- which, the face of the documents indicates, were corporate loans -- were instead personal loans to the Sabets. Moreover, the Tribunal finds no evidence to support the allegation that there was a "conspiracy" between the Claimant and the Sabets with respect to these loans.

The Zamzam Companies also argue that the Agreements contain technical defects, and therefore they are not liable for the repayment of the loans. In particular, the Companies argue that they cannot be bound by these Agreements because, contrary to the Companies' charters, the Agreements were signed by one director rather than two authorized signatories and because the necessary authorization from the board of directors and company seals were missing. Furthermore, the Zamzam Companies argue that the Promissory Notes were only signed by Iradj Sabet in his personal capacity and that according to the "Geneva Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes", dated 7 June 1930, a claim could only be made against him. Finally, the Zamzam Companies contend that the Promissory Notes had not been protested.

The Claimant denies that there were any technical defects in the execution of the Agreements. As discussed above, the Claimant submitted in evidence a series of telexes indicating that each Company's board of directors had approved the loan and authorized Iradj Sabet to sign the Agreements on behalf of each Company. Even if this were not the case, the Claimant argues, Iradj Sabet would under New York law, as well as under Iranian law and general principles of law, have been cloaked with apparent authority to bind the Companies. Also, the Claimant argues that the absence of the Zamzam Companies' corporate seals on these Agreements is irrelevant under New York law and the law of most modern states. As to the Geneva Convention, the Claimant points out that this Convention has not been ratified by either Iran or the United States, and therefore it is not applicable or relevant. Also, the Claimants note that Paragraph 8 of the Loan Agreements, discussed above, expressly waives "presentment demand, protest or other notice of any other kind" after the Promissory Notes became due. Finally, even if there were technical problems with the execution of these Agreements, the Claimant argues, the Zamzam Companies would nevertheless be responsible for the loans under the doctrine of ratification since the Companies accepted and benefitted from the loans.

The Tribunal is satisfied that the Agreements are valid and legally enforceable documents. The Respondents have failed to present sufficient evidence to demonstrate that these Agreements were defectively executed or otherwise invalid as written or applied. Even if there were such defects in the execution of the Agreements, the Zamzam Companies have by their receipt and enjoyment of the loan proceeds ratified the Agreements. See Pomeroy and Government of the Islamic Republic of Iran, Award No. 50-40-3, p. 17 (8 June 1983) ("It is both a general principle of law and a principle embodied in Articles 247 and 248 of the Civil Code of Iran, that a party may not deny the validity of a contract entered into on its

behalf by another if, by its conduct, it later consents to the contract".). The Tribunal therefore rejects this defence.

Based on the above and the record before it, the Tribunal rejects the Respondents' defences to the merits of the Claimant's claim for repayment of the loans. The Tribunal therefore concludes that the Claimant is entitled to repayment of the loan in the principal amount of \$650,000 from each borrowing Zamzam Company.

The Tribunal also rules that as of the date of this Award the Claimant is obligated to deliver to each borrowing Zamzam Company the original Promissory Note signed by Iradj Sabet on 15 May 1977 on behalf of each such Company.

i) Interest

The Claimant seeks interest on the unpaid principal of the loans according to the interest rate stipulated in Paragraph 4 of each of the Loan Agreements.⁵ Paragraph 4 provides:

"Penalty Interest Rate.

Any principal portion of this note which is not paid when due, whether at stated maturity, by acceleration pursuant to the provisions hereof, or otherwise, shall bear interest from date due until payment in full thereof at a per annum interest rate equal to three percent (3%) over the London Inter Bank Offered Rate for three (3) months deposits, such interest to be payable quarterly. Interest will be calculated on thirty (30) days a month of each interest period over factor of three hundred sixty (360) days."

⁵ The Tribunal notes that according to Paragraph 3 of each of the Loan Agreements "[t]his loan shall be non-interest bearing unless not paid when due at stated maturity or be accelerated pursuant to the provisions hereof."

The Tribunal considers it appropriate to award the Claimant this contractually stipulated rate of interest. See Sylvania Technical Systems, Inc. and Government of the Islamic Republic of Iran, Award No. 180-64-1, p. 31 (27 June 1985). The Tribunal also notes that the Respondents have not argued that this rate should not be applied. The Tribunal determines that such interest should be calculated from the date such loans were due to be repaid, 30 April 1979, until the date of this Award.

In order to determine the amount of interest due on each loan in accordance with the terms of the Loan Agreements, it is first necessary to apply the London Interbank Offered Rate ("LIBOR") for three months deposits. It appears that each bank that offers a LIBOR rate establishes that rate itself, typically quoting it daily. While the rates offered by different banks at any one time are understood to be similar, there may be relatively small variations between banks on any particular day. Therefore, in order to calculate with complete precision interest based upon a LIBOR rate, it is necessary to know the particular bank whose rate is to be applied. The Loan Agreements in this Case, however, do not specify the bank whose rate is to be used. The evidence before the Tribunal does contain quoted rates up through the last quarter ending prior to the Hearing, but that evidence relates to only one bank and there is no proof that the Parties agreed to utilize that particular bank's rate. For the period since the Hearing, the Tribunal has been furnished by the Parties with no rates and no indication of the bank whose rate should be used.

Since the evidence is thus not sufficient to permit calculation of the exact amount of interest due on each loan, the Tribunal has found it appropriate to award an amount of interest determined on the basis of LIBOR rates chosen within the exercise of its discretion. See Economy Forms Corp. and Government of the Islamic Republic of Iran, Award No.

55-165-1, p. 22 (14 June 1983), reprinted in 3 Iran-U.S. C.T.R. 42, 53. Accordingly, the Tribunal determines that the amount of interest to be paid on each of the loans for the period from 30 April 1979 to the date of this Award is \$720,000.00.

4. The counterclaim

Having found that the Claimant did not overcharge the Zamzam Companies with its prices for the concentrate delivered, the Tribunal sees no basis for the Zamzam Companies' claim for reimbursement of alleged overcharges. In view of this conclusion the Tribunal does not need to decide the jurisdictional questions with respect to the counterclaim. The Tribunal therefore dismisses the counterclaim.

5. The claims against the Government of Iran and the Foundation for the Oppressed

Having found that the ten purchasing Zamzam Companies are obligated to pay the purchase price of the concentrate and the ten borrowing Zamzam Companies are obligated to repay the loans, and in the light of the fact that these obligations will be satisfied by payment out of the Security Account established pursuant to the Algiers Declarations, it is not necessary for the Tribunal to make any decisions concerning whether or not the Government of the Islamic Republic of Iran and the Foundation for the Oppressed are also liable.

6. Costs

The Tribunal decides that the Zamzam Companies shall pay the Claimant reasonable costs in the total amount of U.S.\$25,000.

III. AWARD

For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

a) The Respondent ZAMZAM BOTTLING COMPANY AZARBAIJAN is obligated to pay the Claimant PEPSICO, INC. the sum of One Million Six Hundred Thirty Three Thousand One Hundred Fifty One United States Dollars and Seventy Eight Cents (U.S.\$1,633,151.78). This sum represents (i) with respect to the claim for accounts receivable, \$248,000 in principal plus \$15,151.78 in simple interest up to and including 19 May 1979, and (ii) with respect to the claim for repayment of the loan, \$650,000 in principal plus \$720,000 in interest. The Respondent ZAMZAM BOTTLING COMPANY AZARBAIJAN is further obligated to pay the Claimant PEPSICO, INC. simple interest at the rate of 10 percent per annum (365-day basis) on \$248,000 from 20 May 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account with respect to the claim for accounts receivable.

b) The Respondent ZAMZAM BOTTLING COMPANY EAST TEHRAN is obligated to pay the Claimant PEPSICO, INC. the sum of One Million Five Hundred Ninety One Thousand Seven Hundred Twenty Two United States Dollars and Twenty Cents (U.S.\$1,591,722.20). This sum represents (i) with respect to the claim for accounts receivable, \$217,000 in principal plus \$4,722.20 in simple interest up to and including 19 May 1979, and (ii) with respect to the claim for repayment of the loan, \$650,000 in principal plus \$720,000 in interest. The Respondent ZAMZAM BOTTLING COMPANY EAST TEHRAN is further obligated to pay the Claimant PEPSICO, INC. simple interest at the rate of 10 percent per annum (365-day basis) on \$217,000 from 20 May 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account with respect to the claim for accounts receivable.

c) The Respondent ZAMZAM BOTTLING COMPANY ESFAHAN is obligated to pay the Claimant PEPSICO, INC. the sum of One

Million Four Hundred Ninety Four Thousand United States Dollars and No Cents (U.S.\$1,494,000.00). This sum represents (i) with respect to the claim for accounts receivable, \$124,000 in principal and (ii) with respect to the claim for repayment of the loan, \$650,000 in principal awarded plus \$720,000 in interest. The Respondent ZAMZAM BOTTLING COMPANY ESFAHAN is further obligated to pay the Claimant PEPSICO, INC. simple interest at the rate of 10 percent per annum (365-day basis) on \$124,000 from 20 May 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account with respect to the claim for accounts receivable.

d) The Respondent ZAMZAM BOTTLING COMPANY GORGAN is obligated to pay the Claimant PEPSICO, INC. the sum of One Million Four Hundred One Thousand Six Hundred Sixty Two United States Dollars and Forty Seven Cents (U.S.\$1,401,662.47). This sum represents (i) with respect to the claim for accounts receivable, \$31,000 in principal plus \$662.47 in simple interest up to and including 19 May 1979, and (ii) with respect to the claim for repayment of the loan, \$650,000 in principal plus \$720,000 in interest. The Respondent ZAMZAM BOTTLING COMPANY GORGAN is further obligated to pay the Claimant PEPSICO, INC. simple interest at the rate of 10 percent per annum (365-day basis) on \$31,000 from 20 May 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account with respect to the claim for accounts receivable.

e) The Respondent ZAMZAM BOTTLING COMPANY KERMAN is obligated to pay the Claimant PEPSICO, INC. the sum of One Million Three Hundred Seventy Thousand United States Dollars and No Cents (U.S.\$1,370,000.00), with respect to the claim for repayment of the loan. This sum represents \$650,000 in principal plus \$720,000 in interest.

f) The Respondent ZAMZAM BOTTLING COMPANY KERMANSHAH is

obligated to pay the Claimant PEPSICO, INC. the sum of One Million Five Hundred Twenty Nine Thousand Eight Hundred Seven United States Dollars and Seventeen Cents (U.S.\$1,529,807.17). This sum represents (i) with respect to the claim for accounts receivable, \$155,000 in principal plus \$4,807.17 in simple interest up to and including 19 May 1979, and (ii) with respect to the claim for repayment of the loan, \$650,000 in principal plus \$720,000 in interest. The Respondent ZAMZAM BOTTLING COMPANY KERMANSHAH is further obligated to pay the Claimant PEPSICO, INC. simple interest at the rate of 10 percent per annum (365-day basis) on \$155,000 from 20 May 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account with respect to the claims for accounts receivable.

g) The Respondent ZAMZAM BOTTLING COMPANY KHUZESTAN is obligated to pay the Claimant PEPSICO, INC. the sum of One Million Six Hundred Eighty Five Thousand Ten United States Dollars and Ninety Six Cents (U.S.\$1,685,010.96). This sum represents (i) with respect to the claim for accounts receivable, \$310,000 in principal plus \$5,010.96 in simple interest up to and including 19 May 1979, and (ii) with respect to the claim for repayment of the loan, \$650,000 in principal plus \$720,000 in interest. The Respondent ZAMZAM BOTTLING COMPANY KHUZESTAN is further obligated to pay the Claimant PEPSICO, INC. simple interest at the rate of 10 percent per annum (365-day basis) on \$310,000 from 20 May 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account with respect to the claim for accounts receivable.

h) The Respondent ZAMZAM BOTTLING COMPANY MASHHAD is obligated to pay the Claimant PEPSICO, INC. the sum of One Million Five Hundred Sixty Two Thousand Four Hundred Thirty Seven United States Dollars and Eighty Two Cents (U.S.\$1,562,437.82). This sum represents (i) with respect to

the claim for accounts receivable, \$186,000 in principal plus \$6,437.82 in simple interest up to and including 19 May 1979, and (ii) with respect to the claim for repayment of the loan, \$650,000 in principal plus \$720,000 in interest. The Respondent ZAMZAM BOTTLING COMPANY MASHHAD is further obligated to pay the Claimant PEPSICO, INC. simple interest at the rate of 10 percent per annum (365-day basis) on \$186,000 from 20 May 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment out of the Security Account with respect to the claim for accounts receivable.

i) The Respondent ZAMZAM BOTTLING COMPANY RASHT is obligated to pay the Claimant PEPSICO, INC. the sum of One Million Six Hundred Twenty Seven Thousand Four Hundred Ninety Five United States Dollars and Thirty Four Cents (U.S.\$1,627,495.34). This sum represents (i) with respect to the claim for accounts receivable, \$248,000 in principal plus \$9,495.34 in simple interest up to and including 19 May 1979, and (ii) with respect to the claim for repayment of the loan, \$650,000 in principal plus \$720,000 in interest. The Respondent ZAMZAM BOTTLING COMPANY RASHT is further obligated to pay the Claimant PEPSICO, INC. simple interest at the rate of 10 percent per annum (365-day basis) on \$248,000 from 20 May 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment out of the Security Account with respect to the claim for accounts receivable.

j) The Respondent ZAMZAM BOTTLING COMPANY SHIRAZ is obligated to pay the Claimant PEPSICO, INC. the sum of One Million Nine Hundred Forty Six Thousand Nine Hundred Seventy Three United States Dollars and Sixty Nine Cents (U.S.\$1,946,973.69). This sum represents (i) with respect to the claim for accounts receivable, \$558,000 in principal awarded plus \$18,973.69 in simple interest up to and including 19 May 1979, and (ii) with respect to the claim for repayment of the loan, \$650,000 in principal awarded plus \$720,000 in

interest. The Respondent ZAMZAM BOTTLING COMPANY SHIRAZ is further obligated to pay the Claimant PEPSICO, INC. simple interest at the rate of 10 percent per annum (365-day basis) on \$558,000 from 20 May 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account with respect to the claim for accounts receivable.

k) The Respondent ZAMZAM BOTTLING COMPANY TEHRAN is obligated to pay the Claimant PEPSICO, INC. the sum of One Million Three Hundred Thirty Nine Thousand One Hundred Sixty Six United States Dollars and Eighty Four Cents (U.S.\$1,339,166.84), with respect to the claim for accounts receivable. This sum represents \$1,271,000 in principal plus \$68,166.84 in simple interest up to and including 19 May 1979. The Respondent ZAMZAM BOTTLING COMPANY TEHRAN is further obligated to pay the Claimant PEPSICO, INC. simple interest at the rate of 10 percent per annum (365-day basis) on \$1,271,000 from 20 May 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account with respect to the claim for accounts receivable.

l) The Respondents ZAMZAM BOTTLING COMPANY AZARBAIJAN, ZAMZAM BOTTLING COMPANY EAST TEHRAN, ZAMZAM BOTTLING COMPANY ESFAHAN, ZAMZAM BOTTLING COMPANY GORGAN, ZAMZAM BOTTLING COMPANY KERMAN, ZAMZAM BOTTLING COMPANY KERMANSHAH, ZAMZAM BOTTLING COMPANY KHUZESTAN, ZAMZAM BOTTLING COMPANY MASHHAD, ZAMZAM BOTTLING COMPANY RASHT, ZAMZAM BOTTLING COMPANY SHIRAZ, ZAMZAM BOTTLING COMPANY TEHRAN are obligated to pay the Claimant PEPSICO, INC. costs of arbitration in the total amount of Twenty Five Thousand United States Dollars (\$25,000).

m) These 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 Government of Algeria of 19 January 1981.

n) The Claimant PEPSICO, INC. is directed to deposit with the Registry of the Tribunal for delivery through the Agent of the Islamic Republic of Iran to each of the Respondents ZAMZAM BOTTLING COMPANY AZARBAIJAN, ZAMZAM BOTTLING COMPANY EAST TEHRAN, ZAMZAM BOTTLING COMPANY ESFAHAN, ZAMZAM BOTTLING COMPANY GORGAN, ZAMZAM BOTTLING COMPANY KERMAN, ZAMZAM BOTTLING COMPANY KERMANSHAH, ZAMZAM BOTTLING COMPANY KHUZESTAN, ZAMZAM BOTTLING COMPANY MASHHAD, ZAMZAM BOTTLING COMPANY RASHT, ZAMZAM BOTTLING COMPANY SHIRAZ the original of the Promissory Note signed by it, copies of which were filed by the Claimant in this Case on 3 November 1981 as Exhibits 23 through 32 of its Statement of Claim, or to provide an explanation satisfactory to the Tribunal as to why it cannot so deposit such original Promissory Notes.

o) The counterclaims are dismissed.

p) This Award is submitted to the President for notification to the Escrow Agent in respect of the claim for accounts receivable totalling \$3,481,428.27 plus simple interest accruing at the rate of 10 percent per annum (365-day basis) on the principal amounts awarded in the above paragraphs from 20 May 1979. Notification in respect of the claim for repayment of the principal of the loans and interest thereon, totalling \$13,700,000.00, shall take place upon confirmation by the Tribunal of the deposit of the Promissory Notes referred to in paragraph n) above with the Registry or of the explanation satisfactory to the Tribunal referred to in the

same paragraph, as the case may be.

Dated, The Hague

11 October 1986

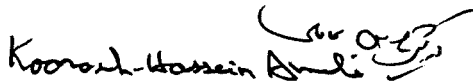


Gunnar Lagergren

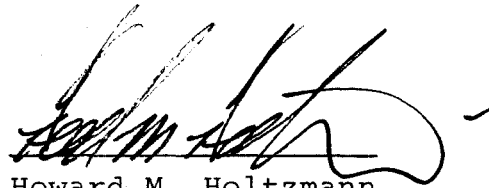
Chairman

Chamber One

In the Name of God



Koorosh-Hossein Ameli
Dissenting Opinion



Howard M. Holtzmann
Joining fully in the Award,
except joining solely in order
to form a majority as to the
award of only \$25,000 in costs
and interest of only 10 percent
on the accounts receivable. See
my Separate Opinion in Sylvania
Technical Systems, Inc. and
Islamic Republic of Iran, Award
No. 180-64-1 (27 June 1985).