

No. 3782

UNITED STATES OF AMERICA
and
FEDERAL REPUBLIC OF GERMANY

Exchange of notes constituting an agreement relating to the settlement of the obligation of the Federal Republic with respect to surplus property. Washington, 11 March and 14 April 1955

Official text: English.

Registered by the United States of America on 27 March 1957.

ÉTATS-UNIS D'AMÉRIQUE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE

Échange de notes constituant un accord relatif au règlement de l'obligation de la République fédérale au titre des biens en surplus. Washington, 11 mars et 14 avril 1955

Texte officiel anglais.

Enregistré par les États-Unis d'Amérique le 27 mars 1957.

No. 3782. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY RELATING TO THE SETTLEMENT OF THE OBLIGATION OF THE FEDERAL REPUBLIC WITH RESPECT TO SURPLUS PROPERTY. WASHINGTON, 11 MARCH AND 14 APRIL 1955

I

The Secretary of State to the Chargé d'Affaires of the Federal Republic of Germany

The Secretary of State presents his compliments to the Chargé d'Affaires of the Federal Republic of Germany and refers to the note of the Diplomatic Mission of August 17, 1954² concurring in a proposal by the Department of State in its note of May 17, 1954² for the final disposition of twelve of the twenty-two claims for damages lodged by third parties against the Federal Republic or its agencies arising from the reacquisition of certain of the surplus property by the United States which had previously been sold by the United States to the Federal Republic. This exchange of notes also envisaged further negotiations between representatives of the two Governments with respect to the remaining ten claims. Meanwhile claims C-15 (Lutes) and C-20 (Kuehn) have been disposed of and so require no further consideration under Articles I and VII of the Surplus Property Payments Agreement.³

Further negotiations between representatives of the two Governments have since taken place regarding the remaining claims in a series of meetings held both in Bonn and in Washington. It also was possible in the meantime for representatives of the United States to analyze and study the claims based upon investigations in the United States and the Federal Republic as well as on information supplied by representatives of the Federal Republic. As a result it was possible during the negotiations for the representatives of the United States to inform the representatives of the Federal Republic of the amounts of the deductions from the indebtedness of the Federal Republic specified in Article I of the Surplus Property Payments Agreement of February 27, 1953 which the United States would be prepared to allow as full and final disposition and adjustment between the two Governments in respect of certain of the remaining claims.

¹ Came into force on 19 April 1955, in accordance with the terms of the said notes.

² United Nations, *Treaty Series*, Vol. 233, p. 31.

³ United Nations, *Treaty Series*, Vol. 205, p. 103.

The representatives of the Federal Republic took the position during the course of the negotiations that the United States proposal could be accepted only in those cases where the claimants were prepared to accept an amount equivalent to the deduction proposed by the United States in full satisfaction of their claims. It is understood that the representatives of the Federal Republic are now in consultation with the claimants in this regard and that offers of settlement are being submitted to the claimants in such a form as fully to preserve the rights of both Governments in the event of litigation.

Should the Federal Republic find it impossible to accept the proposals of the United States in respect of any of the remaining claims by April 30, 1955, the Government of the United States proposes that such claims be disposed of in the following manner :

1. With regard to any of the claims identified as C-12, C-14, C-16, C-18, C-21 and C-22 in the list attached to the Department's note of May 17, 1954, the following arrangements are proposed :
 - a. The United States Government will receive and administratively process these claims on their merits, without raising a jurisdictional question based on the issue of title.
 - b. The claims will be reviewed and a settlement offer, if warranted, will be made by the United States General Accounting Office, provided that the claimants have not filed suits in German courts in respect of their claims.
 - c. After April 30, 1955 the German Federal Government will refrain from negotiating with any of the claimants for an administrative settlement of the claims.
 - d. The German Federal Government will deposit, upon request from the United States Government, such sum or sums in dollars as may be required to honor the settlement offers formulated by the United States General Accounting Office. These sums will be deposited in a special trust account in the United States Treasury and will be used solely for the purpose of paying off the claimants against certificates issued by the United States General Accounting Office. Any funds not used for this purpose in this account will be returned to the German Federal Government.
 - e. If the claimants accept the awards made by the United States General Accounting Office they will receive payment therefor from the United States Government, which will make payment from the trust account referred to above, provided, however, that no payment shall be made to any claimant until he has released all claims against the two governments in a form acceptable to both governments.
 - f. The German Federal Government agrees that in the event suit is filed in German courts by any of the claimants the United States Governments may, if it so desires, participate in any such action by (a) requiring the German

Federal Government to plead certain defenses or to appeal, or (b) appearing as a third party defendant in accordance with the German Code of Civil Procedure.

- g. The United States agrees to allow as a deduction from the indebtedness of the Federal Republic under Article I of the Surplus Property Payments Agreement, the amounts expended by the United States from the sums deposited by the German Federal Government in the special trust account with the Treasury of the United States for settlement of any such claims, and the amounts which have been paid by the German Federal Government in agreement with the United States Government directly to the claimants. In addition, the United States agrees to allow as a similar deduction the costs and judgments paid by the German Federal Government in connection with any litigation against it or its agencies on any other claims in question in which the United States Government has been consulted and afforded the opportunity to participate in accordance with the procedures set forth in the preceding paragraph. Any such deduction in respect of a particular claim shall be reduced by an amount equivalent to the sale price received by the Federal Republic or its agencies for the property involved, except that the application of this sentence to claim C-21 shall be the subject of further discussions between the two governments.

2. With regard to claim C-17, which is pending in the United States Court of Claims and which has also been asserted against the Federal Republic, the Federal Republic will refrain from negotiating with the claimant an administrative settlement of the claim. In the event suit is filed in a German court to enforce the claim, the provisions of subparagraphs (f) and (g) of paragraph 1 above will apply.

3. The German Federal Government agrees that the United States Government may, if it so desires, participate in the suit instituted by Cogimex (C-13) by a) requiring the German Federal Government to plead certain defenses or to appeal, or b) appearing as a third party defendant in accordance with the German Code of Civil Procedure. It is clearly understood that the United States will be prepared to accept a final judgment in such a suit as a determination of the liability of the Federal Republic to Cogimex and of the amount of such liability of the Federal Republic and that the determination of the amount, if any, to be allowed to the Federal Republic as a deduction from the amount specified in Article I of the Surplus Property Payments Agreement in respect of the Cogimex claim is to be settled in negotiations between the two governments now pending on such claim.

4. The United States Government agrees to allow a deduction of \$25,000 effective January 1, 1953 from the indebtedness of the Federal Republic specified in Article I of the Surplus Property Payments Agreement as full and final settle-

ment as between the two Governments in respect of any claims of the German Federal Government for administrative expenses of the Treuhand-Abwicklungs-Gesellschaft m.b.H. (TREUAG) which have arisen in the past or may arise in the future in connection with the disposition of the third party claims arising from the reacquisition of certain surplus property by the United States.

If the Government of the Federal Republic of Germany is agreeable to the foregoing proposals, the Government of the United States of America will consider the present note and your reply concurring therein as constituting an agreement between our respective Governments concerning the manner in which such claims shall be disposed of effective from the date of the receipt of your note in reply.

Department of State

Washington, March 11, 1955

II

*The Chargé d'Affaires of the Federal Republic of Germany
to the Secretary of State*

DIPLOMATIC MISSION OF THE FEDERAL REPUBLIC OF GERMANY

WASHINGTON 9, D. C.

The Chargé d'Affaires of the Federal Republic of Germany presents his compliments to the Secretary of State and has the honor to acknowledge receipt of the Secretary of State's note of March 11, 1955, which reads as follows :

[See note I]

On behalf of the Government of the Federal Republic of Germany the Chargé d'Affaires has the honor to inform the Secretary of State that the proposals set forth in his note of March 11, 1955 are acceptable and that the Federal Government concurs with the further proposal that said note and this reply shall be considered as constituting an agreement between our respective governments which shall enter into force on the date of the receipt of this reply by the Secretary of State.

Washington, D.C., April 14, 1955

G. F.