

DECISION

17861
**THE COMPTROLLER GENERAL
 OF THE UNITED STATES**
 WASHINGTON, D. C. 20548

FILE: B-201284

DATE: April 21, 1981

MATTER OF: Control Data Corporation - Meritorious
 Claim Request

DIGEST: Request in behalf of Control Data Corporation for relief under Meritorious Claims Act denied. Claim is based on expenses incurred in development of Hermitage Museum exhibition in this country which was cancelled when the Government refused to determine that the exhibit would be in the national interest after Soviet Union invaded Afghanistan. Such claim is not unique and is based on view that Government should be responsible for the injury resulting from change in foreign relations.

This decision is in response to a request by attorneys representing the Control Data Corporation for a favorable report and recommendation to Congress under the Meritorious Claims Act on the claim presented. For the reasons given below, we decline to make such a report and recommendation.

In July 1979 Control Data Corporation (CDC) entered into a contract with the Union of Soviet Socialist Republics (USSR) under which the Soviet Government agreed to provide over 400 art objects from the Hermitage Museum of Leningrad for exhibition at seven major museums in the United States. CDC says that this agreement was part of an effort to promote trade and cultural relations with the USSR, an effort that was consistent with the policy of the United States Government at that time. The contract was made contingent upon the President's determining that the exhibition of the art objects in the United States was in the national interest as provided in 22 U.S.C. § 2459 (1976). (The Director of the International Communications Agency (ICA) was delegated the authority to make this determination by Executive Order 12047, March 27, 1978, 43 F.R. 413359.) This determination would generally protect the art objects from judicial process in the United States. In February 1980 CDC was notified that the determination would not be made. CDC attributes this denial to the change in United States policy toward the USSR following the movement of USSR military forces into Afghanistan in late 1979. The planned exhibition tour was cancelled as a result of the denial of certification.

CDC requests our recommendation for relief under the Meritorious Claims Act, 31 U.S.C. § 236 (1976), for the \$1,348,025 of expenses it says it incurred in development of the exhibition prior to the cancellation of its contracts with the USSR.

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The Meritorious Claims Act provides:

"When there is filed in the General Accounting Office a claim or demand against the United States that may not lawfully be adjusted by the use of an appropriation theretofore made, but which claim or demand in the judgment of the Comptroller General of the United States contains such elements of legal liability or equity as to be deserving of the consideration of the Congress, he shall submit the same to the Congress by a special report containing the material facts and his recommendation thereon."

Under this act we have consistently refused to report a claim to Congress unless the claim is of an unusual nature and is unlikely to constitute a recurring problem. 54 Comp. Gen. 1031 (1975).

CDC argues that the unique arrangements and circumstances concerning its efforts to bring major art works from the Hermitage Collection to this country are reasons why we should recommend relief under 31 U.S.C. § 236. CDC particularly stresses that its arrangement with the USSR was cancelled because the United States did not determine the exhibition to be in the national interest. In our view, however, CDC more fundamentally was faced with a change in the Government's foreign policy. As CDC points out, many individuals and businesses were affected to their detriment in this particular shift of policy. It is also true that we can expect that others may in the future suffer from changes in United States Government relations with foreign governments. Economic damages may well be wide spread when significant deterioration occurs in the relations between governments. We have specifically declined to recommend relief to the Congress under similar circumstances. See 53 Comp. Gen. 157 (1973). To recommend relief for some parties and not others would be unfair.

Further, information from the Department of Commerce indicates that in the wake of the Soviet invasion of Afghanistan there was a resultant loss to United States concerns of about \$2.8 billion in agricultural sales, a loss of a potential \$400 million of export sales of phosphates and a \$40 million loss to some 50 United States companies that resulted from the 1980 Olympic games embargo. There would be a chilling effect on Government policy considerations if agencies had to worry about potential financial liability where a change in Government policy can produce economic loss even without direct Government participation in any transaction. It is probably possible to find some one harmed in practically every shift in Government policy. The Government was in no way a party to CDC's

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contract which in fact clearly recognized the possibility of a decision by the Government not to make a determination that the exhibition would be in the national interest. Nor do other equitable considerations particularly indicate that the Government should assume responsibility for the loss. While CDC's efforts were commendable and doubtless were encouraged by the United States Government, we find no equitable claim against the Government based on mistake, misrepresentation or some gain received by the Government at CDC's expense.

Accordingly, we find no element of unusual legal liability or equity that would justify our reporting the claim of CDC to the Congress for its consideration under the Meritorious Claims Act.

MILTON J. SOCOLAR

Acting Comptroller General
of the United States