

EIGHTEENTH ANNUAL

**WILLEM C. VIS
INTERNATIONAL COMMERCIAL ARBITRATION MOOT**

Vienna, Austria
15 - 21 April 2011

Organized by:

**Association for the organisation and promotion of the
Willem C. Vis International Commercial Arbitration Moot**

and

EIGHTH ANNUAL

**WILLEM C. VIS (EAST)
INTERNATIONAL COMMERCIAL ARBITRATION MOOT**

Hong Kong
4 - 10 April 2011

Organized by:

Vis East Moot Foundation Limited

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Horace Fasttrack
Advocate at the Court
75 Court Street
Capital City, Mediterraneo
Tel. (0) 146-9845
Telefax (0) 146-9850
Fasttrack@lawyer.me

20 May 2010

Secretariat
Chamber of Arbitration of Milan
Via Meravigli 9/B
20123 Milan - Italy

Subject: Request for Arbitration

Dear Sirs:

I represent Mediterraneo Trawler Supply AS. Pursuant to Articles 6 and 9 of the Arbitration Rules of the Chamber of Arbitration of Milan, Mediterraneo Trawler Supply AS hereby submits five copies of its request for arbitration against Equatoriana Fishing Ltd. I enclose a copy of my power of attorney to represent Mediterraneo Trawler Supply AS in this arbitration.

The total claimed is USD 479,450 plus interest and costs. The advance on costs referred to in Article 37 will be paid promptly upon receipt of the invoice.

Mediterraneo Trawler Supply AS nominates Ms. Arbitrator 1 as arbitrator in this dispute. Her curriculum vitae is attached.

The contract giving rise to this arbitration provides that the seat of arbitration is Vindobona, Danubia. I understand from Article 4.1 of your Arbitration Rules that the Chamber of Arbitration of Milan is prepared to administer an arbitration outside of Italy and trust that an arbitration in Vindobona, Danubia will be acceptable to the Chamber.

Sincerely yours,
(Signed)
Horace Fasttrack

Encl:
Power of Attorney
Request for Arbitration
Arbitrator 1 curriculum vitae

Mediterraneo Trawler Supply AS, Claimant

V

Equatoriana Fishing Ltd, Respondent

Request for Arbitration

I. Parties

1. Mediterraneo Trawler Supply AS [hereafter “Trawler Supply”], the Claimant, is a corporation organised under the laws of Mediterraneo. It is located at 1 Harbour View Street, Capital City, Mediterraneo. The telephone and telefax numbers are (0) 148-2010 and (0) 148-2011. The email address is office@trawler.me. Trawler Supply will be represented by Horace Fasttrack, Advocate at the Court, 75 Court Street, Capital City, Mediterraneo. Tel. (0) 146-9845; Telefax (0) 1469850; Fasttrack@lawyer.me.

2. Trawler Supply sells supplies to fishing fleets operating out of Mediterraneo. Those supplies include the sale of bait to the long-line fisheries. Furthermore, it produces pelagic, wet salted and dry salted fish for human consumption.

3. Equatoriana Fishing Ltd [hereafter “Fishing”] is a company organised under the laws of Equatoriana. It is located at 30 Seaview Terrace, Oceanside, Equatoriana. The telephone number is (0) 927-8515. The telefax number is (0) 927-8516 and the general email address is enquiries@fish.eq.

4. Fishing owns a fishing fleet operating in the Pacific Ocean. It also purchases product from other fisheries, which it sells along with its own products. In particular, it catches and purchases squid of the species *illex danubecus*, which it sells for both bait and human consumption.

II. Facts

5. Trawler Supply has instituted this arbitration against Fishing to recover for the damage caused to it by Fishing’s failure to deliver squid in conformity with the contract description.

6. In Mediterraneo, there are approximately 30 vessels that catch fish with long lines (long-liners). Trawler Supply has sold supplies, including bait, to the long line fleet for more than 20 years. The long-liners have come to rely on Trawler Supply in relation to quality and delivery.

7. Mackerel and squid have been the predominant species used for bait by the Mediterraneo long-liners. Trawler Supply catches the mackerel itself but the squid that Trawler Supply has sold to the long-liners over the years has been imported, since there is no local source for it. It has tried different types of squid from different areas around the world. After many years of experience, Trawler Supply found that the squid that most reliably met its customers’ requirements was squid caught around the Oceanian Islands.

8. For the type of squid Trawler Supply required, the fishing season is relatively short. Therefore, Trawler Supply buys in large quantities and stores it so that it can supply its customers all year round.

9. In 2007, the squid catch from the Oceanian Islands was below normal and accordingly prices increased. The Mediterranean long-liners asked Trawler Supply to import cheaper squid from other areas, if possible. In particular, some of the fishing fleet were importing squid themselves from Danubia at a lower price and by all accounts the results were satisfactory.

10. Trawler Supply had not purchased squid from Danubia in the past because the quality had not been consistently of the desired level. Quality is an important issue. Long-liners are often far out at sea (a normal trip can have a duration of 6-8 weeks). Sub-standard bait leads to smaller catches. If the bait is below standard, it would be a trip of several days before the long-liner could return to port and re-stock with suitable bait.

11. However, because of the interest in Danubian squid, Trawler Supply decided it needed to re-think its strategy of using only squid from the Oceanian Islands. Therefore, Trawler Supply wrote to several suppliers of Danubian squid to inquire as to prices and availability of squid to be used for bait. The message sent to Fishing is in Claimant's Exhibit No. 1.

12. Among the replies was a message on 18 April 2008 from Mr. Weeg, a sales representative for Fishing. He said he would be visiting Mediterraneo on 17 May 2008 and would plan to visit Trawler Supply to discuss possible future business contacts between the two firms. He indicated that he would bring with him a sample of the squid they had supplied to another firm in Mediterraneo.

13. Mr Weeg came with the sample, which comprised one carton in frozen form. Mr Weeg stated that the sample was representative of the squid being offered.

14. The best size range for squid as bait to optimise the long-liners' catch is 100-150 grams per piece, though some product slightly below the range is acceptable as is some product as high as 200 grams. That is a matter well known in the trade. After defrosting the sample carton, Trawler Supply weighed each piece. With the exception of a very few pieces, the squid were within the range of 100-150 grams with the average weight around 130 grams. Trawler Supply kept the sample to show to its customers. They all found the squid to be acceptable for their needs. Overall the squid sample was very satisfactory.

15. Since the squid sample was of good quality and size, on 29 May 2008 Trawler Supply ordered 200 metric tons of whole round squid from Fishing "as per sample". (Claimant's Exhibit Nos. 2 and 3) Trawler Supply noted on the order form that the squid had to be certified as being fit for human consumption in order to be in conformity with the regulations that all fish products stored in the same location had to be certified as fit for human consumption if any were to be sold for human consumption. This is a common health regulation, applicable in many countries.

16. Fishing duly acknowledged the order. (Claimant's Exhibit No. 4) Trawler Supply paid the purchase price by means of a letter of credit and the squid were sent to Trawler Supply.

17. The squid were delivered on 1 July 2008. They were packed in cartons, which in turn were packed on pallets and the entire delivery was loaded into 12 containers. Upon delivery of the squid, Trawler Supply randomly selected for inspection 20 cartons of squid taken from the two containers that arrived first. Each carton was weighed to confirm that they weighed the required 10 kg per carton. The squid in five of the cartons were defrosted and inspected. They were of the expected quality and size. Once defrosted, the squid could be used only for

fishmeal and had very little value. For that reason, and because the random inspection had confirmed that the weight, size, and quality were as per sample, no further cartons were tested.

18. Trawler Supply then sold the squid to five long-line fishing vessels. When the fishing vessels defrosted the squid it became evident that a large proportion of it was too small to function properly as bait. Two returned to port immediately to return the remaining quantities to Trawler Supply and to resupply with new bait. The three other long-liners were able to remain at sea, since they had sufficient other bait with them, but they too returned a major portion of the Danubian squid upon their return to port. As soon as Trawler Supply heard (at the end of July 2008) from the fishing vessels that the squid was not the right size as bait, it contacted Fishing. (Claimant's Exhibit No. 5) Fishing requested that Trawler Supply have the squid remaining in Trawler Supply's warehouse examined. (Claimant's Exhibit No 6) The TGT report clearly stated that approximately sixty per cent (60%) of the squid was undersized. (Claimant's Exhibits Nos. 7 & 8)

19. Although a portion of the Danubian squid was of an appropriate size for bait, the other fishing vessels refused to purchase any of the squid that had come from Danubia, being unwilling to take any chances.

20. The squid could also not be sold for human consumption locally, since the market for squid for human consumption in Mediterraneo is small and was already saturated. Trawler Supply notified Fishing that it would store the remaining squid in its possession for Fishing's account. It would also attempt to have the squid sold outside Mediterraneo for the account of Fishing. (Claimant's Exhibit No. 7) However, attempts to sell the squid outside Mediterraneo were largely unsuccessful.

21. Trawler Supply's cool store is always full during the period 1 August to 31 January and it often has to store overflow product during that period in other people's cool stores, which it has to pay for.

22. During April and May 2009 when Trawler Supply's cool house would not otherwise have been full, the extra squid still caused difficulty. In particular:

- It had to be moved at least twice during the storage period because of maintenance requirements;
- One store room could not be completely emptied out, so preventing the normal maintenance shut-down during the off-peak season.

23. Every effort was made to encourage Fishing to take back the squid. However, when it repeatedly refused to do so, claiming that it had delivered squid in accordance with the contract, the squid eventually had to be destroyed.

III. Applicable law

24. The contract has no choice of law clause. Equatoriana, Mediterraneo, Oceania and Danubia are all party to the United Nations Convention on Contracts for the International Sale of Goods (CISG). Consequently, pursuant to CISG article 1(1)(a) the contract is governed by the convention.

25. Danubia has adopted the UNCITRAL Model Law on International Commercial Arbitration with the 2006 amendments. Equatoriana, Mediterraneo, Oceania and Danubia are

all party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).

IV. Arbitration Jurisdiction

26. The arbitration clause is found on the sales confirmation. (Claimant's Exhibit No. 4) It reads as follows:

Dispute Settlement:

All disputes arising out of or related to this contract shall be settled by arbitration under the Rules of the Chamber of Arbitration of Milan (the Rules), by three arbitrators. Each party shall appoint one arbitrator and the two arbitrators shall appoint the presiding arbitrator. The arbitration will be conducted in the English language. The place of arbitration is Vindobona, Danubia.

V. Conclusions

27(a). Fishing has breached its contract with Trawler Supply by delivering squid that were not "as per sample" as called for in the purchase order.

(b) Fishing knew at all times that the squid was to be used for bait and not for human consumption.

(c) Fishing knew or ought to have known that the only purpose for indicating on the purchase order that the squid had to be certified as fit for human consumption was to comply with the regulations in Mediterraneo that, if any sea food was to be sold for human consumption, all of the sea food stored in the same facilities had to be certified as fit for human consumption.

(d) Fishing also knew that squid to be used for bait had an optimum size of 100-150 grams with only minor amounts acceptable above or below those limits.

VI. Appointment of Arbitrator

28. Trawler Supply appoints the following individual as its party-appointed arbitrator:

Ms. Arbitrator 1
14 Advocate Way
Oceanside, Mediterraneo
Tel: (0) 614-1570
Fax: (0) 614-1571
Email: arbitrator1@lawyers.mb

VII. Relief Requested

29. Mediterraneo Trawler Supply AS requests the tribunal to find:

- that it has jurisdiction over the dispute between it and Equatoriana Fishing Ltd;
- that Equatoriana Fishing Ltd had failed to deliver squid as required by the contract, and thereby had failed in its obligations under CISG, art. 35(1);
- that Equatoriana Fishing Ltd delivered squid unfit for the purpose for which goods of the same description would ordinarily be used and thereby had failed in its obligations under CISG, art. 35(2)(a);

- that Equatoriana Fishing Ltd delivered squid unfit for the particular purpose expressly made known to the seller, namely that the squid was to be used for bait, thereby failing in its obligations under CISG, art. 35(2)(b);
- that the squid delivered did not possess the quality of goods Equatoriana Fishing Ltd had held out to Mediterraneo Trawler Supply AS by way of a sample, thereby failing in its obligations under CISG, art. 35(2)c).

30. Mediterraneo Trawler Supply AS requests the tribunal to order Equatoriana Fishing Ltd
- to reimburse Mediterraneo Trawler Supply AS the purchase price of the squid in the amount of USD 320,000 less USD 23,000 for the squid retained by its customers for a net amount of USD 297,000;
 - to pay damages in the amount of USD 119,250 for the loss of profit on the unsold squid;
 - to pay damages of USD 44,750 for the extra expenses of storing the squid;
 - to pay damages of USD 12,450 for the expenses incurred in attempting to sell the squid for Fishing's account;
 - to pay damages of USD 6,000 for the expenses incurred in disposing of the squid;
- For a total of USD 479,450;
- to pay interest on the said sums; and
 - to pay the costs of arbitration.

(Signed)
Horace Fasttrack

20 May 2010

Claimant's Exhibit No 1



Mediterraneo
Trawler Supply AS

TO
Equatoriana Fishing Ltd
Oceanside
Equatoriana

per Email

14 April 2008

Mediterraneo Trawler Supply is interested in purchasing squid for re-sale to the long-liner fishing fleet based in Mediterraneo to be used as bait. We would welcome offers of appropriate product.

Please specify species, source, delivery dates and prices.

Sincerely yours,
(Signed)
Nils Korre

Mediterraneo Trawler Supply As
1 Harbour View Street
Capital City, Mediterraneo
Tel. (0) 148-2010
Fax. (0) 148-2011
korre@trawler.me

Claimant's Exhibit No 2

From: Nils Korre, <korre@trawler.me>
Sent: 29 May 2008
To: Frillstone, Nathaniel, <frillstone@fish.eq>
Subject: Purchase order Illex

Attachments: Order Illex

You will find attached a purchase order for 200 Metric Tons Illex. The samples shown to us by Mr. Weeg were very satisfactory. We were particularly pleased that the samples shown to us fell almost exclusively in the range of 100/150 grams. This is particularly important, since that is the range that gives our customers the best results.

We look forward to your confirmation and to receiving the Illex.

Sincerely yours,
(Signed)
Nils Korre

Mediterraneo Trawler Supply As
1 Harbour View Street
Capital City, Mediterraneo
Tel. (0) 148-2010
Fax. (0) 148-2011
korre@trawler.me

Claimant's Exhibit No 3



Mediterraneo
Trawler Supply AS

TO
Nathaniel Frillstone
Equatoriana Fishing Ltd
Oceanside
Equatoriana

per Email

29 May 2008

ORDER FORM

Customer: Trawler Supply AS
Quantity: Approx 200 MT
Commodity: Landfrozen Whole Round Illex Danubecus
Origin: Danubia
Price: US USD 1,600/MT CIF Capital City
Quality: As per sample inspected. Grade A, iced on board and blast frozen immediately upon discharge. Certified fit for human consumption
Packing: Poly-lined block
Payment: Irrevocable & confirmed L/C at 30 days from B/L date

Shipment Schedule:

Vessel: TBA
Load Port: TBA
ETD: Prompt upon receipt of L/C
ETA: TBA
Final Dest: Capital City, Mediterraneo

Label- all cartons with English labels

Claimant's Exhibit No. 4



Equatoriana
Fishing Ltd

Sent by Email Message

DATE: 29 May 2008

**Sale Confirmation I 7533
-Subject to Receipt of L/C-**

As per your purchase order dated today, we are pleased to confirm the following order:

Fishing Order: I 7533
Customer: Trawler Supply AS
Quantity: Approx 200 MT shipped in 20ft containers
Commodity: Landfrozen Whole Round Illex (illex danubecus)
Origin: Danubia
Price: US \$1,600/MT CIF Capital City
Catch: 2007/2008 Catch
Quality: As per sample already received. Grade A. Iced on board and blast frozen immediately upon discharge. Fit for human consumption.
Packing: 10 kg poly-lined block per master carton
Payment: Irrevocable & confirmed L/C at 30 days from B/L date

Shipment Schedule:
Vessel: TBA
Load Port: La Puerta, Oceania
ETD: Prompt upon receipt of L/C
ETA: TBA
Final Dest: Capital City, Mediterraneo

Dispute Settlement:
All disputes arising out of or related to this contract shall be settled by arbitration under the Rules of the Chamber of Arbitration of Milan (the Rules), by three arbitrators. Each party shall appoint one arbitrator and the two arbitrators shall appoint the presiding arbitrator. The arbitration will be conducted in the English language. The place of arbitration is Vindobona, Danubia.

Label- all cartons with English labels

L/C- please ensure that L/C is established immediately for this consignment

Claimant's Exhibit No 5



TO
Nathaniel Frillstone
Equatoriana Fishing Ltd
Oceanside
Equatoriana

per Email

29 July 2008

Dear Mr Frillstone

We were contacted today by two of the fishing vessels to which we sold the squid purchased from Equatoriana Fishing Ltd. Both vessels reported that the squid was hardly useable as bait.

They are returning to port to re-stock. We will have to reimburse them for the squid. Moreover, they will have suffered significant losses due to their loss of sea-time.

We sold squid to three additional vessels from whom we have not heard. They had with them mostly bait other than the Danubian illex, so they may be able to remain at sea even if there is a problem with the squid.

We will keep you informed.

Sincerely yours,
(Signed)
Nils Korre

Mediterraneo Trawler Supply As
1 Harbour View Street
Capital City, Mediterraneo
Tel. (0) 148-2010
Fax. (0) 148-2011
korre@trawler.me

Claimant's Exhibit No. 6

From: Frillstone, Nathaniel, <frillstone@fish.eq>
Sent: 3 August 2008
To: Nils Korre, <korre@trawler.me>
Subject: Purchase order Illex

I am very surprised to hear that there were complaints about the illex we sold you. Please have it inspected by a certified testing agency and keep us informed.

Claimant's Exhibit No. 7



TO
Nathaniel Frillstone
Equatoriana Fishing Ltd
Oceanside
Equatoriana

per Email

16 August 2008

Dear Mr Frillstone

We received the report in regard to the test conducted on the squid from TGT laboratories. A copy is attached to this message. The results are self-explanatory and show clearly that what we got was not squid within the range of 100-150 grams.

What would you like us to do with the product, which we will be holding at your disposition? We can store them in our warehouse for a couple of weeks. However, by the end of November we expect the arrival of new stock – at that point we will have to rent out additional warehouse space at your expense if you do not give us instructions as to the disposition of the squid.

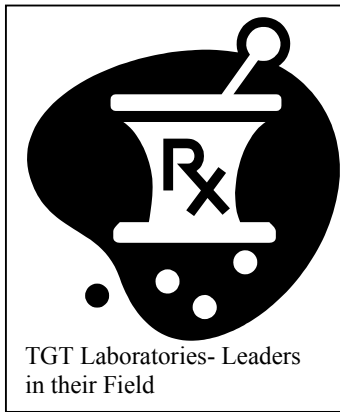
We will also look to sell the squid for your account.

We are looking forward to hearing from you.

Sincerely yours,
(Signed)
Nils Korre

Mediterraneo Trawler Supply As
1 Harbour View Street
Capital City, Mediterraneo
Tel. (0) 148-2010
Fax. (0) 148-2011
korre@trawler.me

REPORT



12 August 2008

per email

REF 34512 NK

Mediterraneo Trawler Supply AS
Capital City
Mediterraneo

Dear Mr Korre

You asked us to examine a randomly selected sample of landfrozen Whole Round Illex (*illex danubecus*) obtained from your warehouse, Harbour View Street 1a, Capital City.

We selected 120 cartons 10 from each storage unit.

Examination Method

.....

Summary of Findings

1. The squid was in excellent condition and was fit for human consumption.
2. Of the 120 cartons we selected, 48 were marked "2007 catch" and 72 were marked "2008 catch".
3. Ninety-four per cent (94%) of the squid in the cartons marked "illex danubecus 2007" were within the range of 100-150 grams. Two percent were between 90 and 100 grams. Four percent were between 150 and 180 grams.
4. Eighty-seven per cent (87%) of the squid in the cartons marked "illex danubecus 2008" were below 100 grams. Of those 68 percent were 90 grams or less. Thirteen percent weighed between 100 and 115 grams.

.....

Kind regards

Dr Jeremy Richardson
Chief Scientist

Claimant's Exhibit No. 9



Equatoriana
Fishing Ltd

Sent by Email Message

DATE: 18 August 2008

Nils Korre
Mediterraneo Trawler Supply AS
1 Harbour View Street
Capital City, Mediterraneo

Re: Illex Danubecus Sale Confirmation I 7533

Dear Mr. Korre:

We have reviewed the inspection report from TGT Laboratories with great interest.

The report confirms our belief that the squid were in complete conformity to the contract.

You had specified that the squid had to be fit for human consumption. The inspection report shows that it was.

The contract described the goods to be delivered as "2007/2008 catch". There is nothing in what you have furnished us, including the inspection report, that suggests that the squid was anything other than either 2007 or 2008 catch.

You have stated that much of the squid was not the proper size for bait. However, there was nothing in our dealings that provided that the squid would be used solely for bait. Indeed, you required that the squid had to be fit for human consumption.

We reject any responsibility for the difficulties you are experiencing.

(Signed)
Nathaniel Frillstone

Claimant's Exhibit No. 10

Witness Statement of Nils Korre

1. My name is Nils Korre and I am the purchasing manager of Mediterraneo Trawler Supply AS. I have worked for the company for the past 23 years and have been the purchasing manager for the past ten years.

2. Mediterraneo Trawler Supply has two principal lines of business. It runs a wholesale business in fish and other seafood for human consumption. It also furnishes the fishing fleets in Mediterraneo with the various supplies they need for their boats. Among other things, it supplies the long-line fisheries with bait.

3. There are 30 long-line fisheries operating out of Mediterraneo. The bait used is primarily squid and mackerel. Mackerel is available in the waters close to Mediterraneo, but the squid has to be imported. We had previously been importing squid from the waters off the Oceania islands. However, because of a poor catch in 2007, the price went very high. The long-liners were unhappy paying so much for the squid. We were asked whether we could not supply them with squid from the waters off Danubia. Several of the long-liners were using Danubian squid and were reportedly satisfied with it.

4. We had hesitated to purchase Danubian-sourced squid, because in our experience they were not consistent in quality. In this case, quality means not only that the squid did not show signs of decay, but also that it was of the proper size. While size is unimportant for squid for human consumption, it is important for squid for bait.

5. The long-liners run lines that are several kilometres in length and have thousands of individual hooks. The bait is placed on the hooks mechanically. If the bait is too large, it tends to drop off the hook when it is run into the water. If the bait is too small, the fish are less interested and the catch is reduced. The optimum size for squid used as bait is 100 to 150 grams. It is not objectionable if a small portion of the bait is under 100 grams or over 150 grams, but it is important that only a small portion be outside the 100-150 range.

6. Nevertheless, because of the interest expressed by a few of our customers, on 14 April 2008 we asked the suppliers of Danubian squid whether they had any for sale, the quality and the price. On 18 April 2008 Mr. Weeg of Equatoriana Fishing Ltd responded that he would be in Mediterraneo on 17 May 2008 to speak with one of its customers and he would come to our offices with a sample of the squid they were supplying. The sample he showed us consisted of one carton of frozen squid that he had obtained from our competitor. He said that it was representative of the squid that they could supply to us.

7. We defrosted the carton and inspected the contents. The squid was in excellent condition. We weighed the carton and it was 10 kg. The individual squid weighed between 100 and 150 grams, with an average weight of about 130 grams. We were very pleased with the sample. We then asked several of our customers to inspect the sample and they also were pleased and suggested that we purchase squid based on the sample.

8. On 29 May 2008 I sent a purchase order to Equatoriana Fishing for 200 metric tons of squid. Mr. Weeg had quoted a price of USD 1,600 per metric ton, which is what we quoted

on the purchase order. We also specified on the order that the squid should be “as per sample”. Finally, the purchase order specified that the squid had to be fit for human consumption. We store all of our sea food in the same refrigerated warehouse and the regulations in Mediterraneo require all of it to be certified as fit for human consumption if any is to be sold for that purpose.

9. The squid arrived on 1 July 2008. They were packed in cartons of 10 kg each. The cartons were packed on pallets and the pallets loaded into twelve containers. The squid we have purchased for bait is stored in our refrigerated warehouse on the pallets. Some of the ships are designed so that they can store the squid on board on the pallets. For the others we deliver the squid on the pallets shipside and the pallets are opened there for loading on board.

10. When the squid arrived we selected a total of 20 cartons from the first two containers and weighed them. This meant that those pallets had to be broken out. The individual cartons weighed the requisite 10 kg. We selected five of the 20 cartons for visual inspection. The cartons were defrosted and the squid were individually inspected visually for quality and then weighed. It is possible to tell from a visual inspection whether any deterioration has begun. The squid were in excellent condition and their weight was just like that in the sample we had seen. At that point we were completely happy with the shipment. Because it was necessary to defrost the squid to inspect it, thereafter it could be used only for fishmeal (there being no takers for human consumption at that time) and was essentially worthless and because we were satisfied with the inspection, we did not do any more testing. We were also under pressure to move some of the squid to one of our customers as quickly as possible.

11. Within the next week we moved a substantial quantity of the squid to five of our customers. Those customers were all long-liners who are at sea for six to eight weeks. Because they are so far from their home ports it is vital that the bait that they take with them is first class quality. While at sea they are not able to replace it if it is deficient in any way, or, if they do return to port to replace it, they lose significant sea-time.

12. As soon as the boats reached the fishing grounds we began to receive reports that most of the squid we had sold them was undersized and that their catch was less than they might otherwise have expected. Two of the boats returned to port and returned the squid to us, for which we had to reimburse them. The other three of the boats remained at sea with our squid and on their return they reported that they had had poor results with it. Two of them had sufficient other bait that they were able to return with a normal catch. On their return they also returned to us the squid that they had not been able to use.

13. It was obvious that we were going to claim against Fishing for our losses arising out of the undersized squid. Fishing requested that we have the squid inspected by a certified inspection organization. We engaged TGT Inspection Services to test the squid for both quality and size. Their report showed that the squid was of an appropriate quality as to freshness, but that it was smaller than had been contracted for.

14. The remaining squid in our possession was essentially unsalable. As I had mentioned already, the squid was purchased only for use as bait. Once the word was out in the market that the Danubian squid we had to offer was undersized, there was a general reluctance to purchase it from us even at a discounted price. The cost of the bait is a small portion of the total costs of a long-liner. Much more important is the depreciation of the boat, fuel and other consumables, crew wages etc.

15. The squid was fit for human consumption. However, we are not normally in the business of selling squid for human consumption, so we have few appropriate contacts. In any case, the market in Mediterraneo for squid for human consumption is very small (restaurants buy by the kilo and not by the ton) and was already occupied by the regular suppliers. Even though we would have been willing to sell at a heavy discount, there were no buyers. We turned to Reliable Trading House and asked them to sell the squid in any foreign market they could find. They were able to sell about 20 metric tons.

16. All this time this squid was occupying space in our refrigerated warehouse. The squid had to be moved at least twice. Further, one store room could not be completely emptied out, so preventing the normal maintenance shut-down during the off-peak period. We urged Fishing to take back the squid, but they refused. Eventually it was necessary to dispose of it as waste. Storing the squid beyond the date it would have been expected to have been sold incurred costs as did its disposal.

17. Equatoriana Fishing has been completely unwilling to acknowledge any responsibility on their part for all that went wrong.

18. The unhappy story led to loss of reputation among our long-liner customers. At least three of them shifted to other suppliers. Fortunately, the portion of our business selling other fish products to the restaurant trade and for sale to retailers throughout Mediterraneo has kept us going.

19. We will certainly not purchase any product from Fishing in the future.

(Signed)
Nils Korre

14 April 2010



MILAN
CHAMBER OF
ARBITRATION

Resolution of commercial disputes

ARBITRATION (9410)

Prot. No. 9410/1

Milan, 21 May 2010

MEDITERRANEO TRAWLER SUPPLY AS
c/o Mr Horace Fasttrack
75 Court Street
Capital City, Mediterraneo
Fax (0) 146-9850
e-mail Fasttrack@lawyer.me

EQUATORIANA FISHING LTD
30 Seaview Terrace
Oceanside, Equatoriana
Fax (0) 927-8516
e-mail enquiries@fish.eq

c.c. via e-mail without enclosures

*via courier
anticipated via fax and e-mail*

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E AGRICOLTURA MILANO

*Dal 1786 l'istituzione
al servizio del sistema
produttivo di Milano.*

Via Meravigli, 9/b
20123 Milan
Tel +39 02.8515.4536 - 4444
Fax +39 02.8515.4384
camera.arbitrale@mi.camcom.it
www.camera-arbitrale.com
C.F. 97425550155
P.IVA 05121020969

Milan Chamber of Arbitration
The Secretariat
Via Meravigli, 9/b
20123 Milan
Tel +39 02.8515.4666 - 4563 - 4524
Fax +39 02.8515.4516
segreteria.arbitrato@mi.camcom.it



MILAN
CHAMBER OF
ARBITRATION

Resolution of commercial
disputes

**ARBITRATION (9410)
TRAWLER SUPPLY / FISHING**

Prot. No. 9410/1

Milan, 21 May 2010

Dear Sirs,

A request for arbitration, naming you as Respondent, was filed with the Secretariat of this Chamber of Arbitration on 20 May 2010, by Mediterraneo Trawler Supply AS.

Please, find enclosed the request for arbitration, and the enclosures attached thereto.

The request is based on the provisions contained in the Sale Confirmation I 7533, dated 29 May 2008. The arbitral clause refers any disputes to arbitration according to the Rules of the Chamber of Arbitration of Milan.

According to Article 10 of the enclosed Arbitration Rules, you shall file your statement of defense within thirty (30) days of receipt of this letter. You shall sign your brief personally, or by an attorney, if any, nominated through a specific proxy. Your submission shall be filed in one original for the Chamber of Arbitration, another original for the other Party, and in three copies for the Arbitral Tribunal. All the original briefs, as well as all the copies, shall be completed with the enclosed documents.

We inform both parties that the counsel in charge of the arbitration is Ms/Mr ..., whose contact details are at the bottom of the cover of this letter.

Please, do not hesitate to contact for any further information you may require.

Sincerely,

The Secretariat
(Signed)

Enclosures:

- Request for arbitration
- Arbitration Rules

Joseph Langweiler
Lawyer
14 Capital Boulevard
Oceanside, Equatoriana
Tel. (0) 214 77 32
Telefax (0) 214 77 33
langweiler@host.eq

24 June 2010

Secretariat
Chamber of Arbitration of Milan
Via Meravigli 9/B
20123 Milan - Italy

Subject: Answer to notice of arbitration and statement of defense: Mediterraneo Trawler Supply SA v. Equatoriana Fishing Ltd

Dear Sirs:

I represent Equatoriana Fishing Ltd. The request for arbitration and statement of claim dated 20 May 2010 filed by Mediterraneo Trawler Supply with the Chamber of Arbitration of Milan have been referred to me.

The answer to the request for arbitration along with the statement of defense is enclosed.

I should like to bring to your notice that Mediterraneo Trawler Supply SA has violated Article 8(1) of the Chamber's rules by referring to its submission of the request for arbitration of the dispute between it and Equatoriana Fishing Ltd. in an interview with a trade newspaper. The statement of defense contains a request that the arbitral tribunal take this breach of the rules into account during the proceedings and to grant the remedy it considers appropriate.

Since the rule goes to the integrity of the arbitral process available at the Chamber, you may also wish to take such action as you consider appropriate. The quotation from the interview is contained in Respondent's Exhibit No. 1.

Pursuant to the Chamber's arbitration rule 10.2.g, Equatoriana Fishing Ltd appoints Professor Arbitrator 2 to the tribunal. His curriculum vitae is enclosed.

(Signed)
Joseph Langweiler

Encl. Power of Attorney
Statement of Defense
CV Professor Arbitrator 2

Chamber of Arbitration of Milan

Mediterraneo Trawler Supply AS, Claimant

v.

Equatoriana Fishing Ltd, Respondent

Statement of Defense

1. As indicated in the Request for Arbitration, Equatoriana Fishing Ltd [hereafter “Fishing”] is a corporation organized under the laws of Equatoriana. It is located at 30 Seaview Terrace, Oceanside, Equatoriana. The telephone number is (0) 927-8515. The telefax number is (0) 927-8516 and the general email address is enquiries@fish.eq.

2. Fishing owns a fishing fleet operating in the Pacific Ocean. It also purchases product from other fisheries, which it sells along with its own products. In particular, it catches squid of the species *illex danubecus*. That species is particularly to be found around the Danubian Islands. *Illex danubecus* is used for both bait and human consumption and is sold both domestically and for export.

3. Fishing will be represented by its counsel, Joseph Langweiler, 14 Capital Boulevard, Oceanside, Equatoriana. His telephone number is (0) 214 77 32. His telefax number is (0) 214 77 33 and his e-mail address is langweiler@host.eq.

I. Violation of the Milan Rules

4. Mediterraneo Trawler Supply (hereafter Trader Supply) violated the Rules of Arbitration of the Chamber of Arbitration of Milan even before Fishing had received the request for arbitration on 25 May 2010. On 22 May 2010, two days after the Request for Arbitration was sent to the Chamber, Mr. Herbert Schwitz, Chief Executive Officer of Trawler Supply, gave an interview to Commercial Fishing Today, which is a trade newspaper distributed in forty-five countries. In the interview he described the arbitration that Trawler Supply had begun against Fishing. (Respondent’s Exhibit No. 1) He is quoted as having said

“Equatoriana Fishing sold us squid for bait that was completely inappropriate and they knew it. Apparently the only way to get them to live up to their responsibilities is to force them to do so. On Thursday our lawyer started arbitration proceedings. Our reputation in the Mediterraneo fishing world has suffered and they will have to make good our losses.”

5. Article 8.1 of the Arbitration Rules provides:

The Chamber of Arbitration, the parties, the Arbitral Tribunal and the expert witnesses shall keep the proceedings and the arbitral award confidential, except in the case it has to be used to protect one’s rights.

6. There could not have been a more flagrant violation of the rules at the very commencement of the arbitral proceedings. Trawler Supply can hardly claim that it was protecting its rights when it gave an interview to a trade newspaper about the dispute between it and Equatoriana Fishing and that it was commencing arbitration.

7. Fishing has an outstanding reputation in the fisheries trade throughout the world. One of the several purposes of the confidentiality requirement in international commercial arbitration, which is a generally recognized doctrine incorporated in many arbitration rules in addition to those of the Chamber of Arbitration of Milan, is to protect the reputation of the disputing parties. The breach of confidentiality, and therefore of the rules governing this arbitration, could not have been better designed to adversely affect Fishing's reputation. That was the effect, whether or not it was the intention.

8. Since Article 8.1 of the Arbitration Rules has not been sufficient by itself to cause Trawler Supply to keep the arbitration confidential, the arbitral tribunal is requested to issue an order to Trawler Supply to respect the confidentiality of the arbitral proceedings as well as any eventual award from now on.

9. It is easily conceivable that the statements by Mr. Schwitz in his interview with Commercial Fisheries Today will result in monetary loss to Fishing. However, the interview was given less than a month ago. It is too early to tell whether the breach of confidentiality and the egregious nature of the breach will result in such loss. Therefore, it is requested that the tribunal declare that Trawler Supply is liable for any damages that may be provable. It is also requested that Fishing be allowed to introduce evidence of the amount of the damage at a later stage of the proceedings, should any become evident.

II. The Contract

A. Conformity to contract description

10. When Fishing received the circular message from Trawler Supply on 14 April 2008, it replied that Mr. Weeg, one of Fishing's sales representatives, would be visiting Mediterraneo on 17 May 2008 and that he would visit the offices of Trawler Supply to discuss possible future business. He said that he would bring a sample of squid that they were supplying to one of Trawler Supply's competitors. He brought with him with one carton of frozen squid. The carton was marked "illex danubecus 2007". Inspection of the squid required that it be defrosted and it was understood that Trawler Supply would do that at a later time after Mr Weeg's departure.

11. On 29 May 2008 Fishing received an order from Trawler Supply for 200 metric tons of illex danubecus "as per sample".

12. Squid can be sold either sized or unsized. Sized squid are sized either mechanically or by sight. Unsized squid are the run of the catch. They are less expensive than are sized squid. Fishing sells both sized and unsized squid. The sample carton of illex danubecus left with Trawler Supply had been from the 2007 catch and the carton was so labeled. The squid were, therefore, unsized.

13. The season for harvesting illex danubecus is from April to September. In the early part of the season the squid are still young and tend to be small, usually running between 70 and 90 grams. As the season progresses the squid increase in size. By the end of the season they run from 140 to 180 grams. In both cases there is some variation for individual specimens and at the end of the season some specimens can be as large as 200 grams. The catch period of the sample left with Trawler Supply by Mr. Weeg was mid-June to mid-August 2007, as shown by the weight of the individual squid running between 100 to 150 grams,

14. Trawler Supply placed its order in May 2008. Fishing had largely exhausted its supply of the 2007 catch when it received the order from Trawler Supply. It had begun to receive stock from the 2008 catch, which it planned to use to fill the order from Trawler Supply. Therefore, Fishing indicated on the sales confirmation that the shipment would be 2007/2008 catch. The contract was, therefore, for unsized squid in conformity with the sample left with Trawler Supply by Mr. Weeg. There was no promise that the squid would weigh 100-150 grams. Furthermore, there was no promise as to what proportions would be from the 2007 or 2008 catches. If Trawler Supply was not satisfied with receiving 2007/2008 catch, the time to say so was on receipt of the sales confirmation.

15. Trawler Supply was aware of the contents of the sales confirmation as shown by the message from Mr. Korre dated 29 May 2008. (Respondent's Exhibit No. 2)

16. The shipment was made in June. Since the 2008 season had begun in April, it was clear that the proportion of the shipment from the 2008 catch would be from the very early part of the season. Trawler Supply, as an experienced participant in the fisheries trade, must have been aware that that squid would be young and of a rather small size.

B. Fit for human consumption

17. An additional requirement listed on the purchase order was that the squid had to be "certified fit for human consumption". The squid that was delivered was fit for human consumption. (Claimant's Exhibit No. 8)

18. Whatever may have been Trawler Supplies' motive for adding that requirement, they were not motives communicated to Fishing. On the contrary, Trawler Supply is in the business of selling fish products both for bait and for human consumption. Indeed, when the long-liners refused to purchase the squid for bait, Trawler Supply sold some of the squid it had received from Fishing through Reliable Trading House. Fishing fulfilled the contract in this respect as well.

III. Inspection of the goods

19. Even if it were to be considered that the squid did not fit the contract description, Trawler Supply has lost its right to complain. CISG, Art. 38(1) provides that: "[t]he buyer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances." Article 38 is completed by Article 39(1). "The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered or ought to have discovered it."

20. The obligation in article 38(1) relates to the adequacy of the inspection, as well as to its promptness. The squid arrived in twelve containers. Trawler Supply selected twenty cartons out of two of the twelve containers for any type of inspection. It weighed the twenty and found them to conform to the weight of 10 kg each. It then defrosted five of the cartons and found that the squid were to its satisfaction.

21. Under any interpretation of the facts the inspection was inadequate. As a result Trawler Supply did not notify Fishing of the alleged lack of conformity of the squid "within a reasonable time after [it] ... ought to have discovered it". Consequently, Trawler Supply has lost the right to rely on an alleged lack of conformity of the squid.

IV. Rules applicable to the arbitration

22. The sales contract is governed by the United Nations Convention on Contracts for the International Sale of Goods. The arbitration agreement provides that the arbitration should be governed by the Arbitration Rules of the Chamber of Arbitration of Milan. The arbitration should take place in Vindobona, Danubia. Danubia has enacted the UNCITRAL Model Law on International Commercial Arbitration with the 2006 amendments.

V. Appointment of arbitrator

23. Fishing appoints Professor Arbitrator 2 to the tribunal. Professor Arbitrator 2's address is 414 University Avenue, University City, Equatoriana. His telephone number is (0) 975 14 38. His telefax number is (0) 975 43 92 and his e-mail address is arbitrator2@ue.eq.

VI. Relief Requested

24. Fishing requests the tribunal:
- to order Trawler Supply to respect the confidentiality of the arbitral proceedings and the award;
 - to find that Trawler Supply is liable for any damage that can later be demonstrated resulting from its breach of the confidentiality of the proceedings;
 - to find that the shipment of squid to Trawler Supply was in conformity with the contract;
 - to find that Trawler Supply did not conduct an adequate examination of the shipment of squid and that it has lost its right to rely upon the alleged lack of conformity of the goods.
25. Fishing therefore requests the tribunal to dismiss Trawler Supplies' claim on the merits.

(Signed)
Joseph Langweiler

24 June 2010

Respondent's Exhibit No. 1

Excerpt from Commercial Fishing Today, dated 24 May 2010

There is a new development in regard to the difficulties Mediterraneo Trawler Supply has had to retain its formerly profitable business servicing the Mediterranean long-liners. Mr. Herbert Schwitz, CEO of Trawler Supply, gave an interview to Commercial Fishing Today. He said that the problems arose out of the supply of undersized bait by Equatoriana Fishing.

“Equatoriana Fishing sold us squid for bait that was completely inappropriate and they knew it. Apparently the only way to get them to live up to their responsibilities is to force them to do so. On Thursday our lawyer started arbitration proceedings. Our reputation in the Mediterraneo fishing world has suffered and they will have to make good our losses.”

Commercial Fishing Today will follow closely the progress of this dispute between these two prominent firms.

Respondent's Exhibit No. 2

From: Nils Korre, <korre@trawler.me>
Sent: 29 May 2008
To: Frillstone, Nathaniel, <frillstone@fish.eq>
Subject: Purchase order Illex

Attachments: Order Illex Danubecus

Thank you for acknowledging our order so promptly. I note that you have added an arbitration clause. That is the first time I have seen one from any of our suppliers.

Sincerely yours,
(Signed)
Nils Korre

Mediterraneo Trawler Supply AS
1 Harbour View Street
Capital City, Mediterraneo
Tel. (0) 148-2010
Fax. (0) 148-2011
korre@trawler.me



MILAN
CHAMBER OF
ARBITRATION

Resolution of commercial disputes

ARBITRATION (9410)

Prot. No. 9410/2

Milan, 25 June 2010

MEDITERRANEO TRAWLER SUPPLY AS
c/o Mr Horace Fasttrack
75 Court Street
Capital City, Mediterraneo
Fax (0) 146-9850
e-mail Fasttrack@lawyer.me

EQUATORIANA FISHING LTD
30 Seaview Terrace
Oceanside, Equatoriana
Fax (0) 927-8516
e-mail enquiries@fish.eq

c.c. via e-mail without enclosures

*via courier
anticipated via e-mail*

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produttivo di Milano.*

Via Meravigli, 9/b
20123 Milan
Tel +39 02.8515.4536 - 4444
Fax +39 02.8515.4384
camera.arbitrale@mi.camcom.it
www.camera-arbitrale.com
C.F. 97425550155
P.IVA 05121020969

Milan Chamber of Arbitration
The Secretariat
Via Meravigli, 9/b
20123 Milan
Tel +39 02.8515.4666 - 4563 - 4524
Fax +39 02.8515.4516
segreteria.arbitrato@mi.camcom.it



MILAN
CHAMBER OF
ARBITRATION

Resolution of commercial
disputes

**ARBITRATION (9410)
TRAWLER SUPPLY / FISHING**

Prot. No. 9410/2

Milan, 25 June 2010

Dear Sirs,

Please, find enclosed the statement of defense filed with the Secretariat of this Chamber of Arbitration by Equatoriana Fishing LTD on 24 June 2010.

Parties are informed that, within the following days, the Secretariat will request the payment of an advance on the costs of the arbitration, according to Article 37, Para. 1, of the Rules, making reference to the 5th basket of the schedule of fees (fixed fee for the Chamber and minimum amount for the Arbitral Tribunal).

Sincerely,

The Secretariat
(Signed)

Enclosures: as stated above.



MILAN
CHAMBER OF
ARBITRATION

Resolution of commercial disputes

ARBITRATION (9410)

Prot. No. 9410/3

Milan, 25 June 2010

Ms Arbitrator 1
14 Advocate Way
Oceanside, Mediterraneo
Fax (0) 614-1571
e-mail arbitrator1@lawyers.mb

Professor Arbitrator 2
414 University Avenue
University City, Equatoriana
Fax (0) 975 43 92
e-mail arbitrator2@ue.eq

via e-mail

via e-mail

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al servizio del sistema
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Via Meravigli, 9/b
20123 Milan
Tel +39 02.8515.4536 - 4444
Fax +39 02.8515.4384
camera.arbitrale@mi.camcom.it
www.camera-arbitrale.com
C.F. 97425550155
P.IVA 05121020969

Milan Chamber of Arbitration
The Secretariat
Via Meravigli, 9/b
20123 Milan
Tel +39 02.8515.4666 - 4563 - 4524
Fax +39 02.8515.4516
segreteria.arbitrato@mi.camcom.it



**ARBITRATION (9410)
TRAWLER SUPPLY / FISHING**

Prot. No. 9410/3

Milan, 25 June 2010

Dear Sirs,

We would like to inform you that the parties appointed you as arbitrators in the captioned arbitral proceedings between Mediterraneo Trawler Supply AS and Equatoriana Fishing Ltd.

The Secretariat of the Chamber of Arbitration of Milan invites you to consider that you should be satisfied to be able to devote all the time and effort necessary to conduct the proceedings in accordance with the requirements of the Arbitration Rules, and the time-limits set forth therein.

Please, find here below the most relevant aspects of the arbitration:

Claimant: MEDITERRANEO TRAWLER SUPPLY AS, with its registered office in 1 Harbour View Street, Capitol City, Mediterraneo; represented and defended by Mr Horace Fasttrack, 75 Court Street, Capitol City, Mediterraneo, Tel. (0) 146-9845, Fax (0) 146-9850, e-mail Fasttrack@lawyer.me.

Respondent: EQUATORIANA FISHING LTD, with its registered office in 30 Seaview Terrace, Oceanside, Equatoriana, Tel. (0) 214 77 32, Fax (0) 927-8516, e-mail enquiries@fish.eq; represented and defended by Mr Joseph Langweiler, 14 Capitol Boulevard, Oceanside, Equatoriana, Tel. (0) 214 77 32, Fax (0) 214 77 33, e-mail langweiler@host.eq.

The request for arbitration is based on the arbitral clause contained in the Sale Confirmation I 7533, dated 29 May 2008. This clause provides as follows:

All disputes arising out of or related to this contract shall be settled by arbitration under the Rules of the Chamber of Arbitration of Milan (the Rules), by three arbitrators. Each party shall appoint one arbitrator and the two arbitrators shall appoint the presiding arbitrator. The arbitration will be conducted in the English language. The place of arbitration is Vindobona, Danubia.

Consequently, according to the arbitral clause, the dispute is referred to a panel of three arbitrators. Claimant appointed Ms Arbitrator 1 as co-arbitrator (14 Advocate Way, Oceanside, Mediterraneo, Tel. (0) 614-1570, Fax (0) 614-1571, e-mail arbitrator1@lawyers.mb); while Respondent appointed Professor Arbitrator 2 (414 University Avenue, University City, Equatoriana, Tel. (0) 975 14 38, Fax (0) 975 43 92, e-mail arbitrator2@ue.eq).



**Resolution of commercial
disputes**

The third arbitrator shall be appointed by you jointly within fifteen (15) days from the confirmation of the second arbitrator, according to Article 18, Para. 4, of the Rules.

Next developments of the proceedings shall consist in your confirmations, the payment of the deposits on the costs of the arbitration (based on a provisional definition of the economic amount of the dispute in accordance with Article 37 of Rules), and the consequent delivery of the whole file (request for arbitration and statement of defense) to the Arbitral Tribunal. As per Article 21, Para. 2, of the Rules, then, the Tribunal shall schedule the date of its constitution within thirty (30) days from receiving the parties' briefs (Article 21, Para. 2).

Please, draw your attention to the fact that, according to the Arbitration Rules and the Code of Ethics of Arbitrators, each arbitrator shall be and remain independent and impartial during the entire arbitral proceedings, as well as after the award is filed, during the period in which an annulment can be sought. Independence and impartiality are to be considered with regards to the parties, their counsels, and the subject matter of the dispute. When filling your statement of independence, you are invited to consider the *IBA Guidelines on Conflicts of Interest in International Arbitration*, here attached. Should the Arbitral Council decide on your statement of independence according to Article 18, Para. 4, of the Rules, please be informed that it will not be bound in its decision by the IBA Guidelines.

We invite you to take into consideration any case of incompatibility as an arbitrator in the light of Article 16, lett. c, of the Rules. In this regard, a list of the members of the Arbitral Council of the Chamber is attached to the Rules.

Furthermore, we invite you to send your acceptance and statement of independence back, as here annexed, within ten (10) days from receipt, as well as the annexed form dealing with your personal data, that we require in order to pay your fees.

As for the arbitrators' fees, please consider that the fees are fixed by the Arbitral Council on the basis of the value of the dispute, in accordance to the schedule attached to the Rules, and here enclosed. The value of the captioned arbitration is provisionally established in the 5th basket of the fee schedule (between € 250.001 and € 500.000). As for this basket, the Arbitral Tribunal's fees are between € 25.000 and € 50.000.

We inform you that the arbitrator's fees are fixed by the Arbitral Council. The Arbitral Council takes into account the efforts devoted by the arbitrators, the complexity of the case, the duration of the proceedings, as well as any other relevant circumstance. As for the payment of your fees, the Secretariat requests the parties to make advance payments, while the Arbitral Council finally determines them at the end of the proceedings. Should the parties settle their dispute before the Arbitral Tribunal is constituted, then the parties will not be charged with any fee for the arbitrators.

Different fees may be established for each member of the Arbitral Tribunal. The Arbitral Council's practice is to fix the 40% of the fees for the President of the Tribunal, and the 30% for each co-arbitrator. However, the Council may decide upon a different allocation based on the circumstances of the case.



**Resolution of commercial
disputes**

As for your expense allowance, as per Article 36, Para. 4, lett. d, of the Rules, please consider that supporting documents for travelling, board and lodging charges are requested (in original or in copy).

The expense refund may concern:

- travelling costs;
- board and lodging costs.

The costs shall be reasonable. For sake of good order, please be informed that business class flights will be refunded only for 3 hours and 30 minutes, or more.

Your fees and expenses are paid by the parties. The Secretariat collects the parties' payments on your behalf throughout the proceedings. If any of the parties fails to pay the requested amount, you are entitled to claim your fee before the competent national court. In this case, the Chamber may join your action, upon agreement of the Chamber itself and the Arbitral Tribunal.

We inform both parties that the counsel in charge of the arbitration is Ms/Mr ..., whose contact details are at the bottom of the cover of this letter.

Sincerely.

The Secretariat
(Signed)

Enclosures:

- Arbitration Rules;
- Schedule of fees;
- Statement of acceptance and independence;
- Fiscal data form;
- IBA Guidelines on Conflicts of Interest.

Ms. Arbitrator 1
14 Advocate Way
Oceanside, Mediterraneo
Tel: (0) 614-1570
Fax: (0) 614-1571
Email: arbitrator1@lawyers.mb

27 June 2010

Secretariat
Chamber of Arbitration of Milan
Via Meravigli 9/B
20123 Milan - Italy

Dear Sirs:

Appointment as arbitrator

I hereby acknowledge receipt of your letter of 25 June 2010 informing me that I have been appointed arbitrator in the arbitration entitled Mediterraneo Trawler Supply AS, Claimant v. Equatoriana Fishing Ltd, Respondent.

I hereby accept the appointment.

You have asked me to state whether I would be independent in this dispute. In particular you have referred me to article 18 of the Arbitration Rules of the Chamber of Arbitration of Milan.

I hereby certify that there are no circumstances that would affect my impartiality or independence.

Sincerely yours,

(Signed)
Ms. Arbitrator 1

NOTE: A similar statement of independence was received from Professor Arbitrator 2. The Secretariat forwarded both statements to the parties who made no comments on them.



MILAN
CHAMBER OF
ARBITRATION

Resolution of commercial disputes

ARBITRATION (9410)

Prot. No. 9410/4

Milan, 9 July 2010

MEDITERRANEO TRAWLER SUPPLY AS
c/o Mr Horace Fasttrack
75 Court Street
Capital City, Mediterraneo
Fax (0) 146-9850
e-mail Fasttrack@lawyer.me

via e-mail

Ms Arbitrator 1
14 Advocate Way
Oceanside, Mediterraneo
Fax (0) 614-1571
e-mail arbitrator1@lawyers.mb

via e-mail

EQUATORIANA FISHING LTD
30 Seaview Terrace
Oceanside, Equatoriana
Fax (0) 927-8516
e-mail enquiries@fish.eq

via e-mail

Professor Arbitrator 2
414 University Avenue
University City, Equatoriana
Fax (0) 975 43 92
e-mail arbitrator2@ue.eq

via e-mail

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CAMERA DI COMMERCIO
INDUSTRIA, ARTIGIANATO
E AGRICOLTURA MILANO

*Dal 1786 l'istituzione
al servizio del sistema
produttivo di Milano.*

Via Meravigli, 9/b
20123 Milan
Tel +39 02.8515.4536 - 4444
Fax +39 02.8515.4384
camera.arbitrale@mi.camcom.it
www.camera-arbitrale.com
C.F. 97425550155
P.IVA 05121020969

Milan Chamber of Arbitration
The Secretariat
Via Meravigli, 9/b
20123 Milan
Tel +39 02.8515.4666 - 4563 - 4524
Fax +39 02.8515.4516
segreteria.arbitrato@mi.camcom.it



MILAN
CHAMBER OF
ARBITRATION

Resolution of commercial
disputes

ARBITRATION (9410)

TRAWLER SUPPLY / FISHING

Prot. No. 9410/4

Milan, 9 July 2010

Dear Sirs,

considering that the co-arbitrators filed their statements of independence without any qualifications, and taking into account that the parties filed no comment thereto, the Secretariat of the Chamber of Arbitration, according to Article 18, Para. 4, of the Arbitration Rules, confirms Ms Arbitrator 1 and Professor Arbitrator 2 as co-arbitrators in the captioned arbitration.

Consequently, as per Article 14, Para. 4, lett. b, of the Rules, the third arbitrator shall be appointed by the co-arbitrators jointly within 24 July 2010.

Sincerely.

The Secretariat
(Signed)

Ms. Arbitrator 1
14 Advocate Way
Oceanside, Mediterraneo
Tel: (0) 614-1570
Fax: (0) 614-1571
Email: arbitrator1@lawyers.mb

15 July 2010

Mr. Horace Fasttrack
Advocate at the Court
75 Court Street
Capital City, Mediterraneo

Mr. Joseph Langweiler
Lawyer
14 Capital Boulevard
Oceanside, Equatoriana

Secretariat
Chamber of Arbitration of Milan
Via Meravigli 9/B
20123 Milan - Italy

Dear Sirs:

Pursuant to the arbitration clause in the contract between Mediterraneo Trawler Supply SA and Equatoriana Fishing Ltd, Professor Arbitrator 2 and I have consulted on the person who should serve as the chairman of the arbitral tribunal.

We have decided to appoint Mr. Malcolm Y as the chairman of the tribunal. Mr. Malcolm Y can be contacted at

Wise, Strong & Clever
25 Court Street
Vindobona, Danubia.

Sincerely,

(Signed)
Ms. Arbitrator 1

Cc: Professor Arbitrator 2



MILAN
CHAMBER OF
ARBITRATION

Resolution of commercial disputes

ARBITRATION (9410)

Prot. No. 9410/5

Milan, 15 July 2010

Mr Malcolm Y
Wise, Strong & Clever
25 Court Street
Vindobona, Danubia
e-mail ...

via e-mail

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Via Meravigli, 9/b
20123 Milan
Tel +39 02.8515.4536 - 4444
Fax +39 02.8515.4384
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P.IVA 05121020969

Milan Chamber of Arbitration
The Secretariat
Via Meravigli, 9/b
20123 Milan
Tel +39 02.8515.4666 - 4563 - 4524
Fax +39 02.8515.4516
segreteria.arbitrato@mi.camcom.it



**ARBITRATION (9410)
TRAWLER SUPPLY / FISHING**

Prot. No. 9410/5

Milan, 15 July 2010

Dear Sir,

We would like to inform you that co-arbitrators appointed you as Chairman of the Arbitral Tribunal in the captioned arbitral proceedings between Mediterraneo Trawler Supply AS and Equatoriana Fishing Ltd.

The Secretariat of the Chamber of Arbitration of Milan invites you to consider that you should be satisfied to be able to devote all the time and effort necessary to conduct the proceedings in accordance with the requirements of the Arbitration Rules, and the time-limits set forth therein.

Please, find here below the most relevant aspects of the arbitration:

Claimant: MEDITERRANEO TRAWLER SUPPLY AS, with its registered office in 1 Harbour View Street, Capitol City, Mediterraneo; represented and defended by Mr Horace Fasttrack, 75 Court Street, Capitol City, Mediterraneo, Tel. (0) 146-9845, Fax (0) 146-9850, e-mail Fasttrack@lawyer.me.

Respondent: EQUATORIANA FISHING LTD, with its registered office in 30 Seaview Terrace, Oceanside, Equatoriana, Tel. (0) 214 77 32, Fax (0) 927-8516, e-mail enquiries@fish.eq; represented and defended by Mr Joseph Langweiler, 14 Capitol Boulevard, Oceanside, Equatoriana, Tel. (0) 214 77 32, Fax (0) 214 77 33, e-mail langweiler@host.eq.

The request for arbitration is based on the arbitral clause contained in the Sale Confirmation I 7533, dated 29 May 2008. This clause provides as follows:

All disputes arising out of or related to this contract shall be settled by arbitration under the Rules of the Chamber of Arbitration of Milan (the Rules), by three arbitrators. Each party shall appoint one arbitrator and the two arbitrators shall appoint the presiding arbitrator. The arbitration will be conducted in the English language. The place of arbitration is Vindobona, Danubia.

Consequently, according to the arbitral clause, the dispute is referred to a panel of three arbitrators. Claimant appointed Ms Arbitrator 1 as co-arbitrator (14 Advocate Way, Oceanside, Mediterraneo, Tel. (0) 614-1570, Fax (0) 614-1571, e-mail arbitrator1@lawyers.mb); while Respondent appointed Professor Arbitrator 2 (414 University Avenue, University City, Equatoriana, Tel. (0) 975 14 38, Fax (0) 975 43 92, e-mail arbitrator2@ue.eq).



Resolution of commercial
disputes

Next developments of the proceedings shall consist in your confirmation, the payment of the deposits on the costs of the arbitration (based on a provisional definition of the economic amount of the dispute in accordance with Article 37 of Rules), and the consequent delivery of the whole file (request for arbitration and statement of defense) to the Arbitral Tribunal. As per Article 21, Para. 2, of the Rules, then, the Tribunal shall schedule the date of its constitution within thirty (30) days from receiving the parties' briefs (Article 21, Para. 2).

Please, draw your attention to the fact that, according to the Arbitration Rules and the Code of Ethics of Arbitrators, each arbitrator shall be and remain independent and impartial during the entire arbitral proceedings, as well as after the award is filed, during the period in which an annulment can be sought. Independence and impartiality are to be considered with regards to the parties, their counsels, and the subject matter of the dispute. When filling your statement of independence, you are invited to consider the *IBA Guidelines on Conflicts of Interest in International Arbitration*, here attached. Should the Arbitral Council decide on your statement of independence according to Article 18, Para. 4, of the Rules, please be informed that it will not be bound in its decision by the IBA Guidelines.

We invite you to take into consideration any case of incompatibility as an arbitrator in the light of Article 16, lett. c, of the Rules. In this regard, a list of the members of the Arbitral Council of the Chamber is attached to the Rules.

Furthermore, we invite you to send your acceptance and statement of independence back, as here annexed, within ten (10) days from receipt, as well as the annexed form dealing with your personal data, that we require in order to pay your fees.

As for the arbitrators' fees, please consider that the fees are fixed by the Arbitral Council on the basis of the value of the dispute, in accordance to the schedule attached to the Rules, and here enclosed. The value of the captioned arbitration is provisionally established in the 5th basket of the fee schedule (between € 250.001 and € 500.000). As for this basket, the Arbitral Tribunal's fees are between € 25.000 and € 50.000.

We inform you that the arbitrator's fees are fixed by the Arbitral Council. The Arbitral Council takes into account the efforts devoted by the arbitrators, the complexity of the case, the duration of the proceedings, as well as any other relevant circumstance. As for the payment of your fees, the Secretariat requests the parties to make advance payments, while the Arbitral Council finally determines them at the end of the proceedings. Should the parties settle their dispute before the Arbitral Tribunal is constituted, then the parties will not be charged with any fee for the arbitrators.

Different fees may be established for each member of the Arbitral Tribunal. The Arbitral Council's practice is to fix the 40% of the fees for the President of the Tribunal, and the 30% for each co-arbitrator. However, the Council may decide upon a different allocation based on the circumstances of the case.



**Resolution of commercial
disputes**

As for your expense allowance, as per Article 36, Para. 4, lett. d, of the Rules, please consider that supporting documents for travelling, board and lodging charges are requested (in original or in copy).

The expense refund may concern:

- travelling costs;
- board and lodging costs.

The costs shall be reasonable. For sake of good order, please be informed that business class flights will be refunded only for 3 hours and 30 minutes, or more.

Your fees and expenses are paid by the parties. The Secretariat collects the parties' payments on your behalf throughout the proceedings. If any of the parties fails to pay the requested amount, you are entitled to claim your fee before the competent national court. In this case, the Chamber may join your action, upon agreement of the Chamber itself and the Arbitral Tribunal.

We inform both parties that the counsel in charge of the arbitration is Ms/Mr ..., whose contact details are at the bottom of the cover of this letter.

Sincerely,

The Secretariat
(Signed)

Enclosures:

- Arbitration Rules;
- Schedule of fees;
- Statement of acceptance and independence;
- Fiscal data form;
- IBA Guidelines on Conflicts of Interest.



MILAN
CHAMBER OF
ARBITRATION

Resolution of commercial disputes

ARBITRATION (9410)

Prot. No. 9410/6

Milan, 26 July 2010

MEDITERRANEO TRAWLER SUPPLY AS
c/o Mr Horace Fasttrack
75 Court Street
Capital City, Mediterraneo
Fax (0) 146-9850
e-mail Fasttrack@lawyer.me

via e-mail

EQUATORIANA FISHING LTD
30 Seaview Terrace
Oceanside, Equatoriana
Fax (0) 927-8516
e-mail enquiries@fish.eq

via e-mail

Ms Arbitrator 1
14 Advocate Way
Oceanside, Mediterraneo
Fax (0) 614-1571
e-mail arbitrator1@lawyers.mb

via e-mail

Professor Arbitrator 2
414 University Avenue
University City, Equatoriana
Fax (0) 975 43 92
e-mail arbitrator2@ue.eq

via e-mail

Mr Malcolm Y
Wise, Strong & Clever
25 Court Street
Vindobona, Danubia
e-mail ...

c.c. via e-mail

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MILAN
CHAMBER OF
ARBITRATION

Resolution of commercial
disputes

ARBITRATION (9410)

TRAWLER SUPPLY / FISHING

Prot. No. 9410/6

Milan, 26 July 2010

Dear Sirs,

Please, find enclosed Mr Malcolm Y's statement of independence, as per Article 18, Para. 3, of the Arbitration Rules.

Parties may file written comments, if any, on the above mentioned statement within ten (10) days from receipt of this letter.

Sincerely.

The Secretariat
(Signed)

Enclosures: as stated above.

Malcolm Y
Wise, Strong & Clever
25 Court Street
Vindobona, Danubia

19 July 2010

Secretariat
Chamber of Arbitration of Milan
Via Meravigli 9/B
20123 Milan - Italy

Subject: Statement of Independence

Dear Sirs:

I acknowledge your letter of 15 July 2010 informing me of my appointment as chairman of the arbitral tribunal in the dispute between Mediterraneo Trawler Supply SA and Equatoriana Fishing Ltd.

I am willing to accept the appointment and would have sufficient time available to carry out my obligations as chairman of the tribunal.

You have also requested that I submit my statement of independence. I am independent of the two parties and would be impartial in the procedure and substance of the dispute.

However, I should bring to your attention that I am a partner in the firm of Wise, Strong & Clever. The firm has approximately 150 lawyers in its six offices. Mr. Samuel Z, a partner in the firm's office in Capital City, Mediterraneo, is advising the claimant in this matter. I have had no contact with Mr. Z about the case and knew nothing about it until I was notified that I was under consideration as chairman of the tribunal.

I await further information in the matter.

Sincerely yours,

(Signed)
Malcolm Y

Joseph Langweiler
Lawyer
14 Capital Boulevard
Oceanside, Equatoriana
Tel. (0) 214 77 32
Telefax (0) 214 77 33
langweiler@host.eq

26 July 2010

Secretariat
Chamber of Arbitration of Milan
Via Meravigli 9/B
20123 Milan - Italy

Subject: Statement of independence of Mr. Y

Dear Sirs:

I acknowledge receipt of your letter of 26 July 2010 enclosing the Statement of Independence of Mr. Malcolm Y.

I have discussed the matter with my clients, Equatoriana Fishing Ltd.

It is recognized that the International Bar Association Guidelines on Conflict of Interest in International Arbitration includes in the waivable red list the following situation:

“2.3.3 The arbitrator is a lawyer in the same law firm as the counsel to one of the parties.”

Although Mr. Z is not counsel to the claimant, he is advising the claimant and the situation could be considered to come within that provision

We know of Mr. Y’s reputation and are sure that he would be independent and impartial in chairing the arbitral tribunal.

Therefore, Equatoriana Fishing Ltd waives its right to object to his appointment as president of the tribunal.

Sincerely yours,

(Signed)
Joseph Langweiler

Note: A similar letter waiving the apparent conflict was received on 27 July 2010 from Mr. Horace Fasttrack on behalf of Mediterraneo Trawler Supply SA.



MILAN
CHAMBER OF
ARBITRATION

Resolution of commercial disputes

ARBITRATION (9410)

Prot. No. 9410/7

Milan, 2 August 2010

MEDITERRANEO TRAWLER SUPPLY AS
c/o Mr Horace Fasttrack
75 Court Street
Capital City, Mediterraneo
Fax (0) 146-9850
e-mail Fasttrack@lawyer.me

via e-mail

Ms Arbitrator 1
14 Advocate Way
Oceanside, Mediterraneo
Fax (0) 614-1571
e-mail arbitrator1@lawyers.mb

via e-mail

EQUATORIANA FISHING LTD
30 Seaview Terrace
Oceanside, Equatoriana
Fax (0) 927-8516
e-mail enquiries@fish.eq

via e-mail

Professor Arbitrator 2
414 University Avenue
University City, Equatoriana
Fax (0) 975 43 92
e-mail arbitrator2@ue.eq

via e-mail

Mr Malcolm Y
Wise, Strong & Clever
25 Court Street
Vindobona, Danubia
e-mail ...

via e-mail

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MILAN
CHAMBER OF
ARBITRATION

Resolution of commercial
disputes

ARBITRATION (9410)

TRAWLER SUPPLY / FISHING

Prot. No. 9410/7

Milan, 2 August 2010

Dear Sirs,

We inform you that the Arbitral Council of the Chamber of Arbitration, by its decision No. 1607/1, dated 30 July 2010, according to Article 18, Para. 4, of the Rules, did not confirm Mr Malcolm Y.

As per Article 20, Para. 3, of the Rules, the co-arbitrators are invited to make a substituted appointment as for the President of the Arbitral Tribunal until 13 August 2010.

Sincerely.

The Secretariat
(Signed)

Ms. Arbitrator 1
14 Advocate Way
Oceanside, Mediterraneo
Tel: (0) 614-1570
Fax: (0) 614-1571
Email: arbitrator1@lawyers.mb

13 August 2010

Mr. Horace Fasttrack
Advocate at the Court
75 Court Street
Capital City, Mediterraneo

Mr. Joseph Langweiler
Lawyer
14 Capital Boulevard
Oceanside, Equatoriana

Secretariat
Chamber of Arbitration of Milan
Via Meravigli 9/B
20123 Milan - Italy

Subject: Appointment of President of the arbitral tribunal; Mediterraneo Trawler Supply AS v. Equatoriana Fishing Ltd

Dear Sirs:

Professor Arbitrator 2 and I have discussed the action of the Arbitral Council not to confirm Mr. Malcolm Y as president of the arbitral tribunal.

We both know Mr. Y very well and have complete trust in him to conduct the arbitration with competence, impartiality and with independence.

Mr. Y devotes all of his professional time to serving as arbitrator, both party-appointed and as president of the tribunal. It is correct, as he has divulged in his Statement of Independence, that he remains a partner in Wise, Strong & Clever and he keeps his office at the firm. However, for the past three years he has not been involved in the client work of the firm.

There is no reason to believe that the fact that a partner in the firm of Wise, Strong & Clever in Capital City, Mediterraneo is advising the claimant would have any affect on the attitude that Mr. Y would take to the arbitration.

It is clear that the parties agree with this assessment, since they have both waived any objections to his appointment.

We have decided, therefore, to re-affirm our appointment of Mr. Malcolm Y as the President of the arbitral tribunal and request the Arbitral Council to confirm him in this role.

Vindobona, Danubia.

Sincerely,

(Signed)
Ms. Arbitrator 1

Cc: Professor Arbitrator 2



MILAN
CHAMBER OF
ARBITRATION

Resolution of commercial disputes

ARBITRATION (9410)

Prot. No. 9410/8

Milan, 26 August 2010

Mr Horace Z

...
...
...

via e-mail

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Via Meravigli, 9/b
20123 Milan
Tel +39 02.8515.4536 - 4444
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Milan Chamber of Arbitration
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20123 Milan
Tel +39 02.8515.4666 - 4563 - 4524
Fax +39 02.8515.4516
segreteria.arbitrato@mi.camcom.it



**ARBITRATION (9410)
TRAWLER SUPPLY / FISHING**

Prot. No. 9410/8

Milan, 26 August 2010

Dear Sir,

We would like to inform you that Arbitral Council of the Chamber of Arbitration of Milan, by its decision No. 1608/1, dated 23 August 2010, appointed you as Chairman of the Arbitral Tribunal in the captioned arbitral proceedings between Mediterraneo Trawler Supply AS and Equatoriana Fishing Ltd.

The Secretariat of the Chamber of Arbitration of Milan invites you to consider that you should be satisfied to be able to devote all the time and effort necessary to conduct the proceedings in accordance with the requirements of the Arbitration Rules, and the time-limits set forth therein.

Please, find here below the most relevant aspects of the arbitration:

Claimant: MEDITERRANEO TRAWLER SUPPLY AS, with its registered office in 1 Harbour View Street, Capitol City, Mediterraneo; represented and defended by Mr Horace Fasttrack, 75 Court Street, Capitol City, Mediterraneo, Tel. (0) 146-9845, Fax (0) 146-9850, e-mail Fasttrack@lawyer.me.

Respondent: EQUATORIANA FISHING LTD, with its registered office in 30 Seaview Terrace, Oceanside, Equatoriana, Tel. (0) 214 77 32, Fax (0) 927-8516, e-mail enquiries@fish.eq; represented and defended by Mr Joseph Langweiler, 14 Capitol Boulevard, Oceanside, Equatoriana, Tel. (0) 214 77 32, Fax (0) 214 77 33, e-mail langweiler@host.eq.

The request for arbitration is based on the arbitral clause contained in the Sale Confirmation I 7533, dated 29 May 2008. This clause provides as follows:

All disputes arising out of or related to this contract shall be settled by arbitration under the Rules of the Chamber of Arbitration of Milan (the Rules), by three arbitrators. Each party shall appoint one arbitrator and the two arbitrators shall appoint the presiding arbitrator. The arbitration will be conducted in the English language. The place of arbitration is Vindobona, Danubia.

Consequently, according to the arbitral clause, the dispute is referred to a panel of three arbitrators. Claimant appointed Ms Arbitrator 1 as co-arbitrator (14 Advocate Way, Oceanside, Mediterraneo, Tel. (0) 614-1570, Fax (0) 614-1571, e-mail arbitrator1@lawyers.mb); while Respondent appointed Professor Arbitrator 2 (414 University Avenue, University City, Equatoriana, Tel. (0) 975 14 38, Fax (0) 975 43 92, e-mail arbitrator2@ue.eq).



Resolution of commercial
disputes

Next developments of the proceedings shall consist in your confirmation, the payment of the deposits on the costs of the arbitration (based on a provisional definition of the economic amount of the dispute in accordance with Article 37 of Rules), and the consequent delivery of the whole file (request for arbitration and statement of defense) to the Arbitral Tribunal. As per Article 21, Para. 2, of the Rules, then, the Tribunal shall schedule the date of its constitution within thirty (30) days from receiving the parties' briefs (Article 21, Para. 2).

Please, draw your attention to the fact that, according to the Arbitration Rules and the Code of Ethics of Arbitrators, each arbitrator shall be and remain independent and impartial during the entire arbitral proceedings, as well as after the award is filed, during the period in which an annulment can be sought. Independence and impartiality are to be considered with regards to the parties, their counsels, and the subject matter of the dispute. When filling your statement of independence, you are invited to consider the *IBA Guidelines on Conflicts of Interest in International Arbitration*, here attached. Should the Arbitral Council decide on your statement of independence according to Article 18, Para. 4, of the Rules, please be informed that it will not be bound in its decision by the IBA Guidelines.

We invite you to take into consideration any case of incompatibility as an arbitrator in the light of Article 16, lett. c, of the Rules. In this regard, a list of the members of the Arbitral Council of the Chamber is attached to the Rules.

Furthermore, we invite you to send your acceptance and statement of independence back, as here annexed, within ten (10) days from receipt, as well as the annexed form dealing with your personal data, that we require in order to pay your fees.

As for the arbitrators' fees, please consider that the fees are fixed by the Arbitral Council on the basis of the value of the dispute, in accordance to the schedule attached to the Rules, and here enclosed. The value of the captioned arbitration is provisionally established in the 5th basket of the fee schedule (between € 250.001 and € 500.000). As for this basket, the Arbitral Tribunal's fees are between € 25.000 and € 50.000.

We inform you that the arbitrator's fees are fixed by the Arbitral Council. The Arbitral Council takes into account the efforts devoted by the arbitrators, the complexity of the case, the duration of the proceedings, as well as any other relevant circumstance. As for the payment of your fees, the Secretariat requests the parties to make advance payments, while the Arbitral Council finally determines them at the end of the proceedings. Should the parties settle their dispute before the Arbitral Tribunal is constituted, then the parties will not be charged with any fee for the arbitrators.

Different fees may be established for each member of the Arbitral Tribunal. The Arbitral Council's practice is to fix the 40% of the fees for the President of the Tribunal, and the 30% for each co-arbitrator. However, the Council may decide upon a different allocation based on the circumstances of the case.



**Resolution of commercial
disputes**

As for your expense allowance, as per Article 36, Para. 4, lett. d, of the Rules, please consider that supporting documents for travelling, board and lodging charges are requested (in original or in copy).

The expense refund may concern:

- travelling costs;
- board and lodging costs.

The costs shall be reasonable. For sake of good order, please be informed that business class flights will be refunded only for 3 hours and 30 minutes, or more.

Your fees and expenses are paid by the parties. The Secretariat collects the parties' payments on your behalf throughout the proceedings. If any of the parties fails to pay the requested amount, you are entitled to claim your fee before the competent national court. In this case, the Chamber may join your action, upon agreement of the Chamber itself and the Arbitral Tribunal.

We inform both parties that the counsel in charge of the arbitration is Ms/Mr ..., whose contact details are at the bottom of the cover of this letter.

Sincerely.

The Secretariat
(Signed)

Enclosures:

- Arbitration Rules;
- Schedule of fees;
- Statement of acceptance and independence;
- Fiscal data form;
- IBA Guidelines on Conflicts of Interest.



MILAN
CHAMBER OF
ARBITRATION

Resolution of commercial disputes

ARBITRATION (9410)

Prot. No. 9410/9

Milan, 26 August 2010

MEDITERRANEO TRAWLER SUPPLY AS
c/o Mr Horace Fasttrack
75 Court Street
Capitol City, Mediterraneo
Fax (0) 146-9850
e-mail Fasttrack@lawyer.me

via e-mail

Ms Arbitrator 1
14 Advocate Way
Oceanside, Mediterraneo
Fax (0) 614-1571
e-mail arbitrator1@lawyers.mb

via e-mail

EQUATORIANA FISHING LTD
30 Seaview Terrace
Oceanside, Equatoriana
Fax (0) 927-8516
e-mail enquiries@fish.eq

via e-mail

Professor Arbitrator 2
414 University Avenue
University City, Equatoriana
Fax (0) 975 43 92
e-mail arbitrator2@ue.eq

via e-mail

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MILAN
CHAMBER OF
ARBITRATION

Resolution of commercial
disputes

ARBITRATION (9410)

TRAWLER SUPPLY / FISHING

Prot. No. 9410/9

Milan, 26 August 2010

Dear Sirs,

We inform you that the Arbitral Council of the Chamber of Arbitration, by its decision No. 1608/1, dated 23 August 2010, according to Article 18, Para. 4, of the Rules, did not confirm Mr Malcolm Y.

By way of the same decision, as quoted here above, and according to Article 20, Para. 3, of the Rules, the Arbitral Council appointed Mr Horace Z as the President of the Arbitral Tribunal.

The Secretariat of the Chamber will forward you a copy of Mr Horace Z's statement of independence, as per Article 18, Para. 3, of the Rules, as soon as possible.

Sincerely,

The Secretariat
(Signed)



MILAN
CHAMBER OF
ARBITRATION

Resolution of commercial disputes

ARBITRATION (9410)

Prot. No. 9410/10

Milan, 31 August 2010

MEDITERRANEO TRAWLER SUPPLY AS
c/o Mr Horace Fasttrack
75 Court Street
Capital City, Mediterraneo
Fax (0) 146-9850
e-mail Fasttrack@lawyer.me

via e-mail

Ms Arbitrator 1
14 Advocate Way
Oceanside, Mediterraneo
Fax (0) 614-1571
e-mail arbitrator1@lawyers.mb

via e-mail

EQUATORIANA FISHING LTD
30 Seaview Terrace
Oceanside, Equatoriana
Fax (0) 927-8516
e-mail enquiries@fish.eq

via e-mail

Professor Arbitrator 2
414 University Avenue
University City, Equatoriana
Fax (0) 975 43 92
e-mail arbitrator2@ue.eq

via e-mail

Mr Horace Z

...
...
...

via e-mail

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MILAN
CHAMBER OF
ARBITRATION

Resolution of commercial
disputes

ARBITRATION (9410)

TRAWLER SUPPLY / FISHING

Prot. No. 9410/10

Milan, 31 August 2010

Dear Sirs,

Please, find enclosed Mr Horace Z's statement of independence, as per Article 18, Para. 3, of the Arbitration Rules.

Parties may file written comments, if any, on the above mentioned statement within ten (10) days from receipt of this letter.

Sincerely.

The Secretariat
(Signed)

Enclosures: as stated above.

NOTE: Mr Horace Z filed an unqualified statement of independence, and the parties submitted no comment thereto.



MILAN
CHAMBER OF
ARBITRATION

Resolution of commercial disputes

ARBITRATION (9410)

Prot. No. 9410/11

Milan, 10 September 2010

MEDITERRANEO TRAWLER SUPPLY AS
c/o Mr Horace Fasttrack
75 Court Street
Capital City, Mediterraneo
Fax (0) 146-9850
e-mail Fasttrack@lawyer.me

via e-mail without enclosures

EQUATORIANA FISHING LTD
30 Seaview Terrace
Oceanside, Equatoriana
Fax (0) 927-8516
e-mail enquiries@fish.eq

via e-mail without enclosures

Ms Arbitrator 1
14 Advocate Way
Oceanside, Mediterraneo
Fax (0) 614-1571
e-mail arbitrator1@lawyers.mb

*via courier
anticipated via e-mail without enclosures*

Professor Arbitrator 2
414 University Avenue
University City, Equatoriana
Fax (0) 975 43 92
e-mail arbitrator2@ue.eq

*via courier
anticipated via e-mail without enclosures*
Mr Horace Z

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*via courier
anticipated via e-mail without enclosures*

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MILAN
CHAMBER OF
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Resolution of commercial
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ARBITRATION (9410)

TRAWLER SUPPLY / FISHING

Prot. No. 9410/11

Milan, 10 September 2010

Dear Sirs,

considering that Mr Horace Z filed his statement of independence without any qualifications, and taking into account that the parties filed no comment thereto, the Secretariat of the Chamber of Arbitration, according to Article 18, Para. 4, of the Rules, confirms Mr Z as Chairman of the Arbitral Tribunal in the captioned arbitration.

Furthermore, we acknowledge that both parties duly paid the requested advance on the costs of the arbitration. Consequently, we forward the request for arbitration and the statement of defense to the Arbitral Tribunal, with all annexed documents. The Arbitral Tribunal is reminded that its constitution shall take place within thirty (30) days of receipt of the parties' briefs, according to Article 21, Para. 2.

Sincerely.

The Secretariat
(Signed)

Enclosures: as stated above.

Chamber of Arbitration of Milan

Mediterraneo Trawler Supply, SA, Claimant
v.
Equatoriana Fishing Ltd, Respondent

Procedural Order No. 1

1. Pursuant to their appointments as arbitrators in the referenced matter, Ms. Arbitrator 1, Professor Arbitrator 2 and Mr. Z as President met on 20 September 2010.
2. In accordance with Article 21(2) of the Arbitration Rules of the Chamber of Arbitration of Milan the tribunal was constituted.
3. It was decided that Mr. Z, as President of the tribunal, would have authority to make procedural decisions subject to later revision by the tribunal.
4. The tribunal noted that the claim by Equatoriana Fishing Ltd that Mediterraneo Trawler Supply AS had breached the obligation of confidentiality consisted of two different forms of relief requested. The request that the tribunal order Mediterraneo to respect the confidentiality of the arbitral proceedings and the award is in the nature of a procedural request. It can easily be considered in the context of the main proceedings relating to the alleged breach of the contract of sale. The request that the tribunal find that Trawler Supply is liable for any damage that can later be demonstrated resulting from its breach of the confidentiality of the proceedings is in the nature of a counter-claim. The tribunal will consider whether it can consider such a request in this arbitration.
5. The tribunal noted that Mediterraneo Trawler Supply AS has instituted the arbitration requesting damages from Equatoriana Fishing Ltd for allegedly delivering squid that did not conform to the contract of sale under CISG article 35(1), 35(2)(a), 35(2)(b) and 35(2)(c). The tribunal also noted that Equatoriana Fishing Ltd had defended on the grounds both (i) that the squid delivered did conform to the contract and (ii) that there was no adequate examination of the squid as required by CISG article 38 and no notice of alleged non-conformity as required by CISG article 39.
6. The tribunal has decided that it would consider the matters referred to in paragraphs 4 and 5 of this Procedural Order at the same time. However, it will leave to later proceedings, if any are necessary, consideration of the quantum of damages for breach of the obligation of confidentiality and any breach of contract.¹

¹ Note to the teams: In other words, in the Moot there will be no consideration of the amount of damages.

7. The tribunal has requested the President to contact the parties and arrange a schedule for the future proceedings in the arbitration. The members of the tribunal have furnished the President with the dates they would be available.

(Signed)
Ms. Arbitrator 1

(Signed)
Professor Arbitrator 2

(Signed)
Mr. Z, President

20 September 2010

Joseph Langweiler

Lawyer
14 Capital Boulevard
Oceanside, Equatoriana
Tel. (0) 214 77 32
Telefax (0) 214 77 33
langweiler@host.eq

24 September 2010

Secretariat
Chamber of Arbitration of Milan
Via Meravigli 9/B
20123 Milan - Italy

Objection to the jurisdiction of the tribunal: Mediterraneo Trawler Supply AS v. Equatoriana Fishing Ltd

Dear Sirs:

There is enclosed an amendment to the Statement of Defense contesting the jurisdiction of the tribunal.

(Signed)
Joseph Langweiler

Chamber of Arbitration of Milan

Mediterraneo Trawler Supply AS, Claimant

v.

Equatoriana Fishing Ltd, Respondent

Amendment to the Statement of Defense

1. The respondent, Equatoriana Fishing Ltd, contests the jurisdiction of the tribunal.
2. The arbitration agreement (Claimant's Exhibit No. 4) provides that
Each party shall appoint one arbitrator and the two arbitrators shall appoint the presiding arbitrator.
3. The two party-appointed arbitrators appointed Mr. Malcolm Y as the President of the tribunal. They communicated the appointment to the parties and to the Chamber of Arbitration of Milan on 15 July 2010.
4. In his Statement of Independence Mr. Y stated that he was a partner in the Vindobona office of Wise, Strong & Clever. He also indicated that a partner in the firm's office in Capital City, Mediterraneo, is advising the claimant in this matter. He went on to say that he had had no contact with that partner about this claim.
5. Both parties waived their right to object to Mr. Y's appointment. Nevertheless, the Arbitral Council refused to confirm him as President. The two party-appointed arbitrators were asked to nominate a different person as President, but in a letter dated 13 August 2010 they re-affirmed their appointment of Mr. Y.
6. The Arbitral Council again refused to confirm Mr. Y and appointed Mr. Z as President.
7. The tribunal has not, therefore, been constituted in accordance with the arbitration agreement. Any award that the tribunal might make could be set aside in the courts of Danubia under article 34(2)(a)(iv) of the UNCITRAL Model Law on International Commercial Arbitration. Furthermore, any award that it might make could be refused enforcement under article V.1.d of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
8. Equatoriana Fishing Ltd therefore requests the tribunal to dismiss the arbitration for lack of jurisdiction.

(Signed)
Joseph Langweiler

24 September 2010

Chamber of Arbitration of Milan

Mediterraneo Trawler Supply AS, Claimant

v.

Equatoriana Fishing Ltd, Respondent

Procedural Order No. 2

1. Mr. Fasttrack for claimant Mediterraneo Trawler Supply AS and Mr. Langweiler for respondent Equatoriana Fishing Ltd were sent copies of Procedural Order No. 1 by courier. By this means they were informed that the arbitral tribunal had been constituted on 20 September 2010.

2. In Procedural Order No. 1 the tribunal authorized the President of the tribunal to make procedural decisions subject to later revision by the tribunal.

3. The tribunal set forth in paragraphs 4 and 5 of Procedural Order No. 1 the issues that it wished to consider before there was any consideration of the quantum of alleged damages. On 24 September 2010 Equatoriana Fishing Ltd filed an amendment to the Statement of Defense in which it requested the tribunal to dismiss the arbitration for lack of jurisdiction on the grounds that the tribunal had not been created in conformity with the arbitration agreement. The President of the tribunal decided that the challenge to the jurisdiction of the tribunal should be considered at the same time as the issues in paragraphs 4 and 5 of Procedural Order No. 1.

4. A conference call was arranged for 1 October 2010 between Mr. Fasttrack, Mr. Langweiler and the President of the tribunal to discuss the arrangements for the arbitral procedure. Because of conflicting calendars, it was necessary to set longer periods of time than would normally be expected. The following schedule was agreed:

Submission of a memorandum for claimant: 9 December 2010

Submission of a memorandum for respondent: 20 January 2011

Oral arguments in Hong Kong: 4 - 10 April 2011

Oral arguments in Vienna: 15 -21 April 2011

5. Article 32(1) of the Arbitration Rules provides that “[t]he arbitral tribunal shall file the final award with the Secretariat within six months from its constitution, unless otherwise agreed by the parties in the arbitration agreement.” The schedule for the arbitration that has been agreed upon makes it impossible for the final award to be filed with the Secretariat within the six month limitation. No agreement for a longer time period appears in the arbitration agreement.

6. Article 32(2) provides that “[i]n any case, the Arbitral Council may extend the time limit for the filing of the award, even on its own initiative, or, where there is consent by the parties to an extension, the Secretariat may do so.” The parties have agreed to an extension of the time period for an additional four months. The President of the tribunal will forward to the Secretariat a request that it grant the extension.

(Signed)

Horace Z

President of the arbitral tribunal



MILAN
CHAMBER OF
ARBITRATION

Resolution of commercial disputes

ARBITRATION (9410)

Prot. No. 9410/12

Milan, 6 October 2010

MEDITERRANEO TRAWLER SUPPLY AS
c/o Mr Horace Fasttrack
75 Court Street
Capital City, Mediterraneo
Fax (0) 146-9850
e-mail Fasttrack@lawyer.me

via e-mail

EQUATORIANA FISHING LTD
30 Seaview Terrace
Oceanside, Equatoriana
Fax (0) 927-8516
e-mail enquiries@fish.eq

via e-mail

Ms Arbitrator 1
14 Advocate Way
Oceanside, Mediterraneo
Fax (0) 614-1571
e-mail arbitrator1@lawyers.mb

via e-mail

Professor Arbitrator 2
414 University Avenue
University City, Equatoriana
Fax (0) 975 43 92
e-mail arbitrator2@ue.eq

via e-mail

Mr Horace Z

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via e-mail

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MILAN
CHAMBER OF
ARBITRATION

Resolution of commercial
disputes

ARBITRATION (9410)

TRAWLER SUPPLY / FISHING

Prot. No. 9410/12

Milan, 6 October 2010

Dear Sirs,

Taking into account that the Arbitral Tribunal was formally constituted on 20 September 2010, by way of Procedural Order No. 1, in accordance with Article 21, Para. 2 and 3, of the Rules;

After perusing the Arbitral Tribunal's Procedural Order No. 2;

Acknowledging the parties' agreement on a four months extension of the time limit set for the Arbitral Tribunal to render the final award (presently expiring on 20 March 2011);

According to Article 32, Para. 2, the Secretariat extends the above mentioned time limit to 20 July 2011.

Sincerely.

The Secretariat
(Signed)

Chamber of Arbitration of Milan

Mediterraneo Trawler Supply AS, Claimant

v.

Equatoriana Fishing Ltd, Respondent

Procedural Order No. 3

In conformity with the Rules of the Willem C. Vis International Commercial Arbitration Moot and Procedural Order No. 2, the following clarifications are given.

1. Did either Equatoriana or Mediterraneo make a declaration under CISG Articles 92 to 96?

No declarations were made.

2. Which option of Article 7 was adopted in Danubia when it adopted the UNCITRAL Model Law on International Commercial Arbitration with the 2006 amendments?

It adopted Option 1.

3. Are Equatoriana and Mediterraneo common law or civil law countries?

Equatoriana is common law and Mediterraneo is civil law.

4. Are Equatoriana, Mediterraneo or Danubia members of the European Union?

No.

5. Can or should the memoranda and the subsequent oral arguments include such matters as fundamental breach or mitigation of damages?

Those matters that go to the existence of liability are included. Any matter that would quantify the claims is not to be argued. The principle of mitigation, but not the amount, would be considered to go to the existence of liability.

6. Should Claimant's Memorandum answer the arguments raised by Fishing as to the jurisdiction of the tribunal and in regard to the issues that arise out of the claimed breach of confidentiality?

Normally (in a real arbitration) Trawler Supply as claimant would not answer those arguments until they arguments had been more fully developed by Fishing. Trawler Supply would be allowed to file a counter-memorandum. However, that procedure is not available. Therefore, the memorandum for claimant should answer those arguments that would arise out of what is in the statement of defence.

7. When did Fishing receive the request for arbitration from the Milan Chamber of Arbitration?

It was received on 25 May 2010.

8. What were the reasons given by the Arbitral Council for not confirming Mr. Malcolm Y as president of the arbitral tribunal?

As is the procedure in many arbitral organizations, the reasons for confirming, not confirming, upholding a challenge or denying the challenge are not communicated.

9. What did Mr. Z's statement of independence say?

It was an unqualified statement essentially the same as that of Ms. Arbitrator 1 on p. 36.

10. Are Horace Z (appointed as President of the arbitral tribunal by the Arbitral Council) and Malcolm Z (partner of Mr. Malcolm Y in the Capital City office of Wise, Strong and Clever) related?

No, there is no relationship between them.

11. What was the date of Procedural Order No. 2?

1 October 2010. The date dropped off the page when reproduced.

12. How much business does Fishing have in Mediterraneo and what is its nature?

Fishing has had three customers in Mediterraneo for the past several years. It has sold a wide range of fish products. In respect to squid, it has sold mostly for bait, but about five percent has been for human consumption.

13. Does Trawler Supply have a good reputation in Mediterraneo?

Trawler Supply has had an excellent reputation.

14. Had Fishing and Trawler Supply had any previous business dealings?

There had been a purchase of other fish products about ten years previously, but nothing since then.

15. Were Fishing or Trawler Supply public or private companies?

Both companies were privately owned and had no obligations to divulge the fact of litigation or arbitration.

16. Had Fishing received other complaints about the Danubian squid?

Every business receives complaints about its products and services. Fishing had also received such complaints. However, there had been no particular complaints about the squid it sold, most of which was sold to regular customers.

17. Is the trade newspaper Commercial Fishing Today distributed in Equatoriana and Mediterraneo?

Commercial Fishing Today is a reputable trade newspaper that is distributed widely in the commercial fishing trade in both countries, among many others. It had previously reported on

the existence of the dispute between Fishing and Trawler Supply without prejudicial comment in regard to either of them.

18. Was Mr. Weeg authorized to act for Fishing?

He did not have a general authority to act in all matters, but he was authorized to act in matters concerning the sale of fish products by Fishing.

19. What is meant when the purchase order specified that the squid be “Grade A” and the sales confirmation repeated that the squid would be “Grade A”.

Grade A referred to the quality of the squid. The principal reason for squid not to be Grade A would be that it had deteriorated due to inadequate freezing or handling or the passage of time. It did not refer to the size of the squid.

There is no reason to believe that the squid were not Grade A in the light of the inspection report from TGT Laboratories (Claimant’s Exhibit No. 8).

20. What do L/C and B/L in the sales confirmation (Claimant’s Exhibit No. 4) refer to?

L/C means letter of credit and B/L means bill of lading.

21. Was the squid sold by Fishing from its own catch or had they purchased it from another squid fishery?

As stated in the Statement of Defense, para. 3, Fishing sells fish products that it has caught itself and that it has purchased from other fisheries. That is the case with the squid that it sells, as well as the other fish products. No differentiation is made by it between the two sources when packaging and selling the squid.

22. Does Equatoriana also have a health regulation that fish to be used for bait must be certified as fit for human consumption if they are to be stored with other fish products that are to be used for human consumption?

Yes, that is the rule in Equatoriana as well.

23. Was there any communication between Fishing and Trawler Supply between 29 May 2008 and 29 July 2008?

No, there was no correspondence between them during that period.

24. Was the sample carton of squid brought by Mr. Weeg to show as a sample squid that it had sold to Trawler Supply’s customer?

Yes, Fishing had sold the carton to the competitor in Mediterraneo. The competitor dealt in squid exclusively for bait. It stored squid and other bait in a warehouse that was separate from the warehouse where it stored fish products to be sold for human consumption in Mediterraneo or abroad.

25. What part of the premises did Mr. Weeg come to at Trawler Supply and what discussions were there between Mr. Weeg and Trawler Supply’s personnel when he brought the sample to them?

Mr. Weeg came to Trawler Supply's office. There was very little time for discussion, since it was a busy time for Trawler Supply. Specifically, there was no discussion as to what the squid would be used for.

26. Did Fishing understand the importance of the size of the squid if it was to be used for bait?

Fishing was an experienced firm in the fish trade. It knew that the size of the bait would be important for long-line fishing.

27. Did Trawler Supply know that the season for illex danubecus began in April and that the squid became larger as the season progressed?

Trawler Supply was an experienced firm in the fish trade. It knew the seasons for harvesting the different species of squid and that the squid grew larger as the season progressed.

28. Trawler Supply states that it had hesitated to purchase Danubian-sourced squid because in its experience it is not consistent in quality. Did this relate to the size of the squid?

As stated in the statement of claim, para. 9, Trawler Supply had not previously purchased squid from Danubia. The experience that Mr. Korre referred to in his witness statement (Claimant's Exhibit No. 10, para. 4) was the experience of those in the trade, which widely talked about.

As noted the squid was "land frozen". Squid that is sold as "land frozen" is chilled on the fishing vessel and frozen once the ship lands. This is not as certain to produce quality squid as that which is frozen on board the fishing vessel. Land frozen squid is the norm in Danubia.

29. How long from the date of catch does land frozen stay fit for human consumption?

There is no general period of time that the squid would stay fit for human consumption. It would depend, upon other things, how well the chilling on board the vessel was done, how quickly the freezing ashore was done, the care given the squid prior to shipment, during shipment and storage at the buyer's location. However, the longer it has been since catch, the harder it is to sell. Moreover, individual countries may have limits on the time from catch to sale at retail.

30. Why did Trawler Supply have the squid destroyed?

By the time the squid in this dispute was destroyed it was reaching a point where it was no longer certain to be fit for human consumption. Moreover, the squid was occupying space in Trawler Supply's warehouse, it had been unable to sell the squid and Fishing was refusing to take them back.

31. Were the containers containing the squid all delivered on the same day?

They were all on the same container vessel. The two containers with the squid that Trawler Supply examined were the first to be delivered by truck from the port. The other containers arrived during the day.

32. Were the cartons labeled “illex danubecus 2007/2008” or were some labeled “illex danubecus 2007” and others labeled “illex danubecus 2008”?

Some were labeled “illex danubecus 2007” and others were labeled “illex danubecus 2008”. The cartons that were examined were all labeled “illex danubecus 2007”, as had been the sample brought by Mr . Weeg.

33. Could Trawler Supply have examined the squid without defrosting it?

No, defrosting was a necessary part of any inspection.

34. Was there any other communication between Fishing and Trawler Supply in which, for example, there might have been a declaration of avoidance?

The file contains the entire communication between them.

35. Is TGT a certified testing agency?

Yes. The tests it carried out on the squid were standard.

36. How long would be the normal time that could be expected between the sales confirmation and delivery of the squid to Trawler Supply?

The major components of the period would be the date when a ship bound from La Puerta, Oceania to Capital City, Mediterraneo would be available and the length of the ocean voyage. There would also be the time for stuffing the containers. The normal time that could be expected would four to six weeks.

(Signed)
Horace Z
President of the arbitral tribunal

29 October 2010