

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