CAIFL (International Arbitration Chamber for fruit and vegetables)

EXCLUSIVE JURISDICTION OF THE ARBITRATION TRIBUNAL – CONFORMITY OF THE MERCHANDISE

WHEN A CONTRACT REFERS TO THE STANDARD BUSINESS CONDITIONS; KNOWN AND SIGNED UP BY BOTH PARTIES; GIVES THE ARBITRATION CHAMBER OF FRUITS AND VEGETABLES EXCLUSIVE JURISDICTION, THE ARBITRATION CHAMBER IS COMPETENT TO RESOLVE ANY LITIGATION THAT MAY OPPOSE THE PARTIES.

THE PARTY WHO REFUSES THE SHIPMENT ONCE THE CONSECUTIVE REPORTS ANALYSES SHOWED ITS CONFORMITY IS HELD RESPONSIBLE.

STATEMENT OF CASE

Company X has sold to Company Y 10 Tons of Turkish Frozen Bio strawberries and Bio – Cherries.

The contract was concluded subject to Claimant's Standard Business Conditions, which includes the COFREUROP conditions, containing an arbitration clause attributing competence to the CAIFL (International Arbitration Chamber for fruit and vegetables) to resolve any litigation that may oppose the parties.

On the 20th of August 2004, Company X delivered the requested quantity. Seeing that the load of strawberries was not free from residues, Company Y accepted the load of cherries delivered the same day, the corresponding invoice was directly sent to the buyer.

The defendant claims that the goods are not in conformity with the contractual requirements, and provides to support its allegation the report analysis detecting a high concentration of captan as well as the avoidance of the claimant to produce the certification of the biological status of the fruits. The claimant contends the opposite relying on the analyses report certifying the conformity of the contentious goods.

On the 29th of March 2005, the Company X referred by letter a case to the INTERNATIONAL ARBITRATION CHAMBER FOR FRUITS AND VEGETABLES so as to institute arbitration proceedings to resolve a dispute with their contractor, the Company Y.

GROUNDS FOR JUDGEMENT

• On the Jurisdiction of the Arbitral Tribunal

« Considering that the defendant contests the validity of this arbitration agreement and consequently the competence of the International Arbitration Chamber for Fruits and Vegetables;

Considering that Company Y argues that a forcible arbitration agreement in German Law has to be made by separate contract;

But considering that in the present case, the arbitration agreement has been reached by General Terms of Business;
Considering that in accordance with the provisions of the Arbitration Proceedings act of the 22 December 1997 in German Law, taking effect on the 1st of January 1998, the parties can agree upon an arbitration clause in Standard Business Conditions;

Considering that section 8 of the standard Business Conditions, known and signed up by both parties as a part of the contract, gives the Arbitration Chamber for Fruits and Vegetables exclusive jurisdiction for any dispute arising for the contract;

The arbitral Tribunal pronounces that the INTERNATIONAL ARBITRATION CHAMBER FOR FRUITS AND VEGETABLES has exclusive jurisdiction and therefore is competent in this case ».

• **On the Merits of the case**

  a) **On the notice of non – conformity**

  « Pursuant to 377 paragraph 1 of the German Handelsgesetzbuch and section 6 of the COFREUROP Conditions, the buyer loses its legal remedies for non-contractual delivery if it fails to give valid notice of such non conformity;

  Indeed the buyer shall:
  - Examine the shipment without delay and immediately notify the defect, if detected;
  - Use all economical and technical means to detect any « hidden » defect as soon as possible;

  Considering that the defendant asserts that a delay in time is necessary to detect a hidden defect, as unexpected residues;

  Considering that the claimant contends that none of supra mentioned conditions have been respected, since the first analysis has been made a month later;

  The Arbitral Tribunal, even taking into account that the alleged defect is a hidden effect, considers that there was no reasonable excuse for not notifying the seller in due time ».

  b) **On the non-conformity of the goods**

  « It is clear view of this Tribunal that the respondent should be held responsible for the belated notice of non-conformity of the litigious good, as well as for the refusal showed its conformity.

  But since Company X failed to perform its obligation to communicate the original certification of the biological status of the merchandise and a loss has been suffered by both parties due to the privation of what they were entitled to expect under the contract, the Arbitral Tribunal finds legitimate to apportion the demands of the claimant »