

**TWENTIETH ANNUAL**

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

Vienna, Austria  
22 - 28 March 2013

Organized by:

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

and

**TENTH ANNUAL**

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

Hong Kong  
11 – 17 March 2013

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

1 July 2012

Chinese European Arbitration Centre  
Landgericht Hamburg  
Sievekingplatz 1  
20355 Hamburg  
Germany

Mediterraneo Exquisite Supply, Co. application for arbitration

Dear Sirs:

I represent Mediterraneo Exquisite Supply, Co. Pursuant to CEAC Arbitration Rules, art. 3(1), I hereby submit to you a Notice of Arbitration against Equatoriana Clothing Manufacturing, Ltd. The Notice also serves as a Statement of Claim pursuant to CEAC Arbitration Rules, art. 20. Therefore, a copy of the Notice has been sent to Equatoriana Clothing Manufacturing, Ltd. as provided in art. 20.

A copy of the power of attorney that I represent Mediterraneo Exquisite Supply, Co. in this arbitration is enclosed.

The total claimed is USD 2,127,500 plus interest and costs. The claim is denominated in US dollars. At an exchange rate of 1.25 dollars to the Euro, the claim is EUR 1,702,000. The administration fee of EUR 87,212 will be paid on receipt of an invoice.

The contract giving rise to this arbitration provides that the seat of arbitration is Vindobona, Danubia and that the arbitration will be in English.

The arbitration agreement provides for three arbitrators for disputes of more than EUR 100,000. Mediterraneo Exquisite Supply hereby appoints Dr. Arbitrator 1 as its party appointed arbitrator.

The required documents are attached to the Notice of Arbitration.

Sincerely yours,  
(Signed)  
Horace Fasttrack

Attachment:

Application for Arbitration

Registration of Mediterraneo Exquisite Supply, Co. in Company register, Mediterraneo

Power of Attorney

CV of Dr. Arbitrator 1

Mediterraneo Exquisite Supply, Co., Claimant

v.

Equatoriana Clothing Manufacturing, Ltd, Respondent

Application for Arbitration and Statement of Claim

Parties to the Arbitration

1. Claimant: Mediterraneo Exquisite Supply, Co.

45 Commerce Road

Capital City, Mediterraneo

Tel. (0) 485 62 00

Telefax (0) 485 62 11

Info@exquisite.me

2. Arbitral Agent: Horace Fasttrack

75 Court Street, Capital City, Mediterraneo

Tel. (0) 146-9845; Telefax (0) 146-9850; E-mail Fasttrack@lawyer.me

3. Respondent: Equatoriana Clothing Manufacturing, Ltd.

286 Third Avenue

Oceanside, Equatoriana

Tel. (0) 238 86 00

Telefax (0) 238 86 01

office@clothing.eq

4. Arbitral agent: Joseph Langweiler

14 Capital Boulevard

Oceanside, Equatoriana

Tel. (0) 214 77 32

Telefax (0) 214 77 33

langweiler@host.eq

Facts

5. Mediterraneo Exquisite Supply, Co. (hereafter referred to as Exquisite) is registered in and managed in the country of Mediterraneo. It is jointly owned by Oceania Plus Enterprises (hereafter Oceania Plus) and Atlantica Megastores. Oceania Plus is a large multinational group supplying leisure clothing to (i) a number of internationally famous brands including Neyeky, Adundas and Ruff Lawrence (ii) leading supermarket chains such as Curry4, Seemsboro's and Tusko and (iii) other buyers from around the world. It also owns several retail clothing chains, one of which is Doma Cirun, also located in Oceania.

Oceania Plus is known for its high ethical standards, which feature prominently on its

10. The contract between Exquisite and Equatoriana Clothing called for the delivery of 100,000 polo shirts of various colors and sizes per the technical specifications attached to the contract. The price was USD 550,000 FAS INCOTERMS®2010 Oceanside, Equatoriana. Delivery was called for by 19 February 2011. Given the shipping time from Oceanside, Equatoriana to Port City, Oceania, the port of entry for Oceania, the polo shirts could be expected to arrive at Port City about 28 February 2011. That would be the latest that would allow for the transport to Doma Cirun's warehouse and then to the retail stores throughout Oceania in time for the launch date of the summer selling season on 15 March 2011. A major advertising campaign, which featured the Yes Casual line of clothing, would precede the launch date.

11. Exquisite arranged for the shipping from Oceanside, Equatoriana to Port City, Oceania for 19 February 2011 and had a letter of credit opened by the Commercial Bank of Mediterraneo in favor of Equatoriana Clothing. The letter called for documents indicating arrival of the goods at the port ready for loading by 19 February 2011. The letter was confirmed by the Export and Import Bank of Equatoriana.

12. On 9 February 2011 Mr. Russell Long, the Procurement Specialist at Exquisite received a telephone call from Mr. Tomas Short, Contracting Officer at Equatoriana Clothing, in which Mr. Short said that it would not be able to make the shipping date of 19 February 2011. Mr. Short said that they would be able to deliver to the port on 24 February 2011 in time for loading that day.

13. Mr. Long reiterated the importance of the delivery date to the port at Oceanside, Equatoriana since 19 February 2011 was the latest by which the shirts could be in the stores by 15 March 2011. Both points had already been emphasized at the time the contract had been signed. Mr. Short apologized for the delay and said that it had been caused by the delay of one of its suppliers to deliver the required material on time. He said that unfortunately, there was no possibility of delivering on 19 February 2011. Mr. Long repeated that they urgently needed the polo shirts, but that under the circumstances he would take care of the necessary adjustments. Shipping would be arranged for the 24<sup>th</sup> and the letter of credit would be amended to reflect the new date. Nothing was said about amending the shipping date in the contract itself. (Claimant's Exhibit No. 2)

14. A new shipping contract was entered into calling for delivery to the port in time for loading on 24 February 2011 and the letter of credit was duly amended.

15. Mr. Long immediately notified Doma Cirun of the delay. In reply Doma Cirun thanked him for the information but reminded him that it would mean that the polo shirts would not be in the stores on the launch date of the summer season, 15 March 2011. Doma Cirun would hold Exquisite responsible for the delay and was pleased to hear that Mr. Long had not amended the delivery date in the contract. (Claimant's Exhibit No. 3)

16. The polo shirts were delivered to the port on 24 February 2011 and promptly loaded on board. The ship arrived at Port City, Oceania on 5 March 2011. They cleared customs

and were delivered to the warehouse of Doma Cirun on 11 March 2011. Delivery to the various Doma Cirun retail stores throughout Oceania and stocking the merchandise ready for sale was completed on 20 March 2011.

17. On 5 April 2011 Channel 12 television broadcast a shocking documentary, in part based on film allegedly taken at one of Equatoriana Clothing's production facilities, showing children as young as eight working in appalling conditions. Although it was not clear whether the polo shirts in this dispute had been produced at the facility in question,



- additional law suits were threatened by investors who had lost substantial sums because of the loss in the value of their holdings of Oceania Plus stock, and eventually were filed.

21. In the late afternoon of 8 April 2011 Doma Cirun notified Exquisite that it was avoiding the contract and that Exquisite should arrange to dispose of the remaining stock of the polo shirts. (Claimant's Exhibit No. 5)

22. Upon receipt of the notice of avoidance by Doma Cirun, Exquisite immediately notified Equatoriana Clothing that it was avoiding the polo shirt contract between the two of them and demanded that Equatoriana Clothing arrange to dispose of the unsold stock. (Claimant's Exhibit No. 6)

23. Equatoriana Clothing denied that there had been a breach of contract and refused to take back the polo shirts or to make arrangements for their disposal. (Claimant's Exhibit No. 7) On 20 April 2011 Exquisite sold the remaining 99,000 shirts to Pacifica Trading Co. at a price of USD 470,000 FCA INCOTERMS®2011 Port City, Oceania.

24. At Doma Cirun's request Exquisite contracted with Gold Service Clothing for 90,000 polo shirts for USD 612,000 on a rush basis. Because of the urgent need for the polo shirts the first 20,000 were shipped by air to Oceania with the remaining 70,000 delivered by ship, which was the normal and far less expensive mode of carriage.

25. On 15 September 2011 Doma Cirun began arbitration proceedings against Exquisite in accord with the arbitration clause in their contract. The asserted claim was for USD1,825,000, consisting of:

- reimbursement from Exquisite of the purchase price of the polo shirts;
- the lost sales because of the late delivery of the polo shirts manufactured by Equatoriana Clothing;
- the lost sales from the lack of polo shirts from 8 April 2011 to 30 April 2011 when the air shipment of the polo shirts manufactured by Gold Service Clothing arrived and were ready for sale in the Doma Cirun stores;
- the difference between the purchase price of the polo shirts purchase from Exquisite and the cost of the replacement purchase, including the air freight and shipping costs;
- damage to the Doma Cirun reputation and to the Yes Casual brand of merchandise.

26. On 14 January 2012 a settlement agreement was reached in the arbitration of Doma Cirun against Exquisite for USD 850,000, which was duly paid by Exquisite.

27. The law suits by the Children Protection Fund of Oceania and the other investors in Oceania Plus were settled with Oceania Plus paying a total of USD 700,000. This was an extremely favorable settlement for Oceania Plus, since the damages claimed in the law suits totaled USD 15,000,000.

28. On 15 February 2012 Oceania Plus brought suit against Exquisite in the courts of Oceania claiming reimbursement of the USD 700,000 paid by Oceania Plus in the settlements with the investors. On 25 June 2012, following the taking of legal advice, Exquisite agreed to pay the full amount claimed.

#### Arbitration agreement

29. Article 19 of the contract between Exquisite and Equatoriana Clothing (Claimant's Exhibit No. 1) provides:

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by institutional arbitration administered by the Chinese European Arbitration Centre (CEAC) in Vindobona, Danubia in accordance with the CEAC Hamburg Arbitration Rules.

- (a) The number of arbitrators shall be three unless the amount in dispute is less than EUR 100,000 in which case the matter shall be decided by a sole arbitrator;
- (b) The language to be used in the arbitral proceedings shall be English;
- (c) The arbitration shall be confidential;
- (d) The parties agree that also the mere existence of an arbitral proceeding shall be kept confidential except to the extent disclosure is required by law, regulation or an order of a competent court;
- (e) The arbitral tribunal shall apply the CEAC Hamburg Arbitration Rules as in force at the moment of the commencement of the arbitration unless one of the parties requests the tribunal, within 4 weeks as of the constitution of the arbitral tribunal, to operate according to the CEAC Hamburg Arbitration Rules as in force at the conclusion of this contract.<sup>1</sup>

#### Applicable law

30. According to article 20 of the contract

This contract shall be governed by the United Nations Convention on Contracts for the International Sale of Goods of 1980 (CISG) without regard to any national reservation, supplemented for matters which are not governed by the CISG, by the UNIDROIT Principles of International Commercial Contracts and these supplemented by the otherwise applicable national law.

31. Mediterraneo is a party to the United Nations Convention on Contracts for the International Sale of Goods (CISG) having made the article 96 declaration. The Supreme Court of Mediterraneo has ruled in three cases that the requirement that the contract is in writing applies to an amendment to the contract as well as to the original contract. Equatoriana is a party to the CISG with no reservations or declarations. Mediterraneo, Equatoriana and Danubia are party to the Convention on the Recognition and

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<sup>1</sup> The CEAC Rules in force at the time of the commencement of the arbitration in this Problem would be the September 2010 version. Nevertheless, for the purposes of the Moot, the applicable Rules are those of September 2012.

Enforcement of Foreign Arbitral Awards (New York Convention). Danubia has enacted the UNCITRAL Model Law on International Commercial Arbitration with the 2006 amendments. It adopted Option II of Article 7. Equatoriana, Mediterraneo and Oceania are all party to the Convention on the Worst Forms of Child Labour.

#### Conclusions and claim

32. Equatoriana Clothing was five days late delivering the polo shirts. According to article 10 of the contract, it must pay one per cent (1%) of the purchase price for each day's delay. Since the contract price was USD 550,000, the amount due because of the late delivery is USD 27,500.

Claimant's Exhibit No 1

Contract Excerpts

1. Equatoriana Clothing Manufacturing, Ltd. agrees to sell and Mediterraneo Exquisite Supply, Co. agrees to purchase 100,000 units of polo shirts. Quality, size and colors are to be as described in Annex 1. The shirts are to carry the label "Yes Casual" on the inside collar.

2. **PRICE** The price is USD 550,000 FAS INCOTERMS®2010 Oceanside, Equatoriana. Payment to be by letter of credit issued by the Commercial Bank of Mediterraneo, to be confirmed by the Export and Import Bank of Equatoriana.

3. **DELIVERY DATE** Goods to be by 19 February 2011, portside Oceanside, Equatoriana.

\* \* \*

10. **INCENTIVES** a) For successful delivery of the entire order early, a bonus of 1.5% of the contract price per complete week early, to a maximum of 7.5%.

b) For late delivery not exceeding 15 days, a deduction of 1% of the contract price per day late, to a maximum of 15%.

c) For delivery more than 15 days late, a deduction of a further 2% of the contract price per day.

\* \* \*

12. **POLICY** It is expected that all suppliers to Oceania Plus Enterprises or one of its subsidiaries will adhere to the policy of Oceania Plus Enterprises that they will conform to the highest ethical standards in the conduct of their business.

\* \* \*

19. **Arbitration** Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by institutional arbitration administered by the Chinese European Arbitration Centre (CEAC) in accordance with the CEAC Hamburg Arbitration Rules.

(a) The number of arbitrators shall be three unless the amount in dispute is less than EUR 100,000 in which case the matter shall be decided by a sole arbitrator;

(b) The language to be used in the arbitral proceedings shall be English;

(c) The arbitration shall be held in Vindobona, Danubia. Hearings may take place in other locations.

(d) The arbitration shall be confidential;

(e) The parties agree that also the mere existence of an arbitral proceeding shall be kept confidential except to the extent disclosure is required by law, regulation

or an order of a competent court;

(f) The arbitral tribunal shall apply the CEAC Hamburg Arbitration Rules as in force at the moment of the commencement of the arbitration unless one of the parties requests the tribunal, within 4 weeks as of the constitution of the arbitral tribunal, to operate according to the CEAC Hamburg Arbitration Rules as in force at the conclusion of this contract.

**20. APPLICABLE LAW** This contract shall be governed by the United Nations Convention on Contracts for the International Sale of Goods of 1980 (CISG) without regard to any national reservation, supplemented for matters which are not governed by the CISG, by the UNIDROIT Principles of International Commercial Contracts and these supplemented by the otherwise applicable national law.<sup>2</sup>

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<sup>2</sup> See Article 35 of the CEAC Arbitration Rules.

## Claimant's Exhibit No. 2

### Witness Statement of Mr. Russell Long

I am Russell Long, the Procurement Specialist for Mediterraneo Exquisite Supply, Co. On 2 January 2011 I received a telephone call from Doma Cirun that they urgently needed to procure polo shirts for the summer season. The firm that was to manufacture the shirts had entered bankruptcy and would not be able to furnish them after all. I was asked to contact the firms in my area that might be able to manufacture them on a rush basis. The shirts should arrive at Port City, Oceania at the latest by 28 February 2011 so that they could be in the stores by 15 March 2011, the launch date for the summer selling season. I was told they would need 100,000 units of various sizes and colors. The shirts would carry the Yes Casual brand, the house brand of Doma Cirun.

I contacted the possible suppliers in my area and found that there were three that said they would be able to handle that size order on a rush basis. One of them was Equatoriana Clothing Manufacturing, Ltd. I had some hesitancy contracting with it. It had been almost three years since the last time we had purchased from them. There had been an audit of their business practices in connection with the negotiation of the contract. Oceania Plus Enterprise, of which we are a subsidiary, is an extremely ethical business and insists on the highest level of ethical practices in business that I am aware of. The audit of Equatoriana had turned up some evidence of shady dealing, including suspicions of the use of child labor. However, the evidence had not been solid and eventually the audit was approved and the contract was entered into.

Since Equatoriana Clothing offered a price for the polo shirts that was significantly less than that asked for by the other two firms, on 5 January 2011 a contract was concluded. The contract required delivery to the port Oceanside, Equatoriana by 19 February 2011. In my conversations with Mr. Tomas Short the contracting officer for Equatoriana prior to the conclusion of the contract, I had emphasized the importance of the delivery date, and he said he understood. The contract showed the importance of delivery by the contract date, since it provided for a deduction from the sale price of 1% per day of delay for the first 15 days. The deduction was even higher after the 15 days had passed.

On 9 February 2011 I received a telephone call from Mr. Short. He said that they would not be able to deliver by 19 February. He apologized, but said that one of their suppliers had failed to deliver the necessary supplies on time. I told him that this would cause all kinds of trouble for Doma Cirun and he said that he understood, but that there was nothing they could do now but to get the order out as fast as possible.

Under the circumstances there was little I could do except to accept that the delivery would be late. It would not have been possible to contract with another supplier for the shirts to be delivered by 19 February. I told him that I would take care of the shipping

contract from Oceanside to Port City and have the letter of contract amended to reflect the new date. Nothing was said about the contract itself and specifically nothing was said about the deduction for late delivery.

(Signed)  
Russell Long

15 August 2011

Claimant's Exhibit No. 3

Doma Cirun  
14 Commercial Avenue  
High City, Oceania  
Tel. (0) 836 2150  
Telefax (0) 923 61 27  
retail@doma.oc

10 February 2011

Mr. Russell Long  
Procurement Specialist  
Mediterraneo Exquisite Supply, Co.  
45 Commerce Road  
Capital City, Mediterraneo

By fax and post

Dear Mr. Long,

This is to confirm our telephone conversation of today.

It is a very serious matter for us that the polo shirts will not be available for sale in our stores on the launch date of the summer selling season. They had been expected to be one of the featured items in our advertising.

I appreciate that there is little you can do about it. Nevertheless, we will claim against Mediterraneo Exquisite Supply for damages caused by the late delivery.

I am glad to hear that you did not waive the delivery date in the contract. You should then be able to collect from Equatoriana Clothing Manufacturing the damages stipulated in your contract with them.

Yours sincerely,

(Signed)

Ms. Gertrude Stippel



Claimant's Exhibit No. 4

Article from the Oceania Times of 8 April 2011.

(The substance of the article is summarized correctly in the Application for Arbitration and Statement of Claim in paragraph 18.)

Claimant's Exhibit No. 5

Doma Cirun  
14 Commercial Avenue  
High City, Oceania  
Tel. (0) 836 2150  
Telefax (0) 923 61 27  
retail@doma.oc

8 April 2011

Mr. Russell Long  
Procurement Specialist  
Mediterraneo Exquisite Supply, Co.  
45 Commerce Road  
Capital City, Mediterraneo

By fax and post

Dear Mr. Long:

You have undoubtedly heard that on 5 April television Channel 12 broadcast a documentary that showed children as young as 8 years old working in, among other locations, a production facility allegedly that of Equatoriana Clothing Manufacturing. Although it did not state that the facility in question was one involved in the polo shirt contract, it strongly condemned both Oceania Plus and Doma Cirun for dealing with Equatoriana Clothing Manufacturing.

Three days later on 8 April the Oceania Times published a long investigative article about child labor and the international efforts to combat it. It emphasized the leading role that Oceania, its business community and civic organizations had taken in the efforts, particularly in the International Labour Organization to combat the use of child labour.

The reaction among the public in Oceania was immediate. Sales throughout our stores dropped immediately upon the broadcast by Channel 12, becoming even worse after the article in the Oceania Times. There have been almost no sales of Yes Casual polo shirts today and we have every reason to believe that will continue throughout the summer.

I need not tell you that the use of child labor in the production of clothing for our stores is a major violation of the policy that all suppliers will adhere to the principles on ethical standards in the conduct of their business. The violation of that policy by Equatoriana Clothing Manufacturing has led to serious consequences for Doma Cirun. Therefore, Doma Cirun hereby informs you that it is avoiding the contract between us of 7 January

2011. Please arrange for the disposal of the remaining stock of the polo shirts, which we will hold at your disposal.

Yours sincerely,

(Signed)

Ms. Gertrude Stippel

Claimant's Exhibit No. 6

Mediterraneo Exquisite Supply, Co.  
45 Commerce Road  
Capital City, Mediterraneo  
Tel. (0) 485 62 00  
Telefax (0) 485 62 11  
[Info@exquisite.me](mailto:Info@exquisite.me)

8 April 2011

Mr. Tomas Short  
Equatoriana Clothing Manufacturing, Ltd.  
286 Third Avenue  
Oceanside, Equatoriana

Fax and courier

Dear Mr. Short:

On 5 April 2011 television Channel 12 broadcast a documentary, part of which had been allegedly filmed in one of your production facilities. It showed children as young as 8 years old working in your facility.

As a result, sales in all Doma Cirun stores immediately dropped. Sales of the Yes Casual line of clothes were particularly affected, and there were practically no sales of the Yes Casual polo shirts that Equatoriana Clothing Manufacturing, Ltd. had manufactured.

The polo shirts were not fit for sale in Oceania. The consequences of your breach of contract were extremely serious and as a result we are avoiding the contract. I would ask you to immediately make arrangements for the disposal of the shirts.

We reserve our rights in all respects to all remedies available to us.

(Signed)  
Russell Long

Claimant's Exhibit No. 7

Equatoriana Clothing Manufacturing, Ltd.  
286 Third Avenue  
Oceanside, Equatoriana  
Tel. (0) 238 86 00  
Telefax (0) 238 86 01  
[office@clothing.eq](mailto:office@clothing.eq)

10 April 2011

Mr. Russell Long  
Procurement Specialist  
Mediterraneo Exquisite Supply, Co.  
45 Commerce Road  
Capital City, Mediterraneo

By fax and post

Dear Mr. Long:

We are surprised by your letter of 8 April 2011. We know nothing about the television program that you wrote about. Even though you report that they indicated that some of the footage had been taken in one of our facilities, we know nothing about any camera crews taking any kind of pictures, moving or still, in any of them.

In any case, I can assure you that no child labor was involved in any way in the production of the polo shirts we sold to you.

We do not agree that we breached our contract with you. Therefore, we will not be picking up the polo shirts. If they are not to be sold in the Doma Cirun stores, which is a decision only they can make, it is up to Doma Cirun to dispose of them.

In spite of this unfortunate situation, I look forward to future contracts with Mediterraneo Exquisite Supply.

Yours sincerely,

(Signed)  
Tomas Short  
Contracting Officer

CEAC GmbH: c/o Handelskammer Hamburg · Adolphsplatz 1 · 20457 Hamburg

**Per Mail and Courier**

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

**Fasttrack@lawyer.me**

**CHINESE EUROPEAN ARBITRATION CENTRE GmbH**

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**Mediterraneo Exquisite Supply, Co. v.  
Equatoriana Clothing Manufacturing, Ltd.**

Hamburg, den 6. July 2012

**File No. 20120107**

Dear Mr. Fasttrack,

We acknowledge receipt of your Notice of Arbitration dated 2 July 2012 (with attachments) in seven copies.

We advise as follows:

**I. Acceptance of the Case and File Number**

CEAC hereby accepts the administration of this case consequent on the arbitration clause cited in the Notice of Arbitration/Statement of Claim. The case has been allocated the file number referred to above. Please reference this file number in all future communications with CEAC in respect of this arbitration.

**II. Applicable version of the CEAC Hamburg Arbitration Rules**

The CEAC Hamburg Arbitration Rules shall apply to this arbitration in the 2012 version [see p. 10, footnote 1 of the Application for Arbitration], of which we attach a **copy** together with the Schedule of Costs.

**III. Financial Matters**

1. Pursuant to Article 3 paragraph 2 of the CEAC Hamburg Arbitration Rules, please find enclosed **Invoice No. 20120107-1** for our administration fees calculated according to the Annex of the **Schedule of Costs**. Please transfer this amount to the **CEAC account** indicated in the bottom of page 1 of this letter.
2. Further, in light of your intention to advance 100% of the arbitrator fees, please find enclosed Invoice **No. 20120107-2** which is to be payable to the following **trust account** which we have opened for this case:

Hypo Vereinsbank  
Account-No. 602 047 xxx  
Bank Code 200 300 00  
BIC HYVEDEMM300  
IBAN DE10 2003 0000 0602 047x xx

3. We require payment to the above mentioned accounts by **23 July 2012** at the latest.
4. According to Art. 43 para. 2 of the CEAC Hamburg Arbitration Rules, Respondent is required to pay half of the advance on costs (except for the administration fee). Upon receipt of such advance for 50% of costs from Respondent, CEAC will reimburse that sum to your account. All such costs will be costs in the arbitration.

**IV. Notification of the Respondent**

We will notify the Respondent of your Application for Arbitration and Statement of Claim as soon as we will have received the **Administration Fees** (see above III.1).

**V. Communication with the Arbitrator**

We have requested Dr. Arbitrator 1, whom you have appointed, to issue to CEAC a declaration of impartiality and independence in accordance with Article 11 of the CEAC Hamburg Arbitration Rules.

Yours sincerely,

Prof. Dr. Management  
- *CEAC Managing Director* -

Encls: 1. The Arbitration Rules  
2. Schedule of Costs with Annex  
3. Copy of our letter to Dr. Arbitrator 1



Hamburg, den 6 July 2012

**File No. 20120107**

*in Vindobona, Danubia in accordance with the CEAC Hamburg Arbitration Rules.*

*(a) The number of arbitrators shall be three unless the amount in dispute is less than EUR 100,000 in which case the matter shall be decided by a sole arbitrator;*

*(b) The language to be used in the arbitral proceedings shall be English;*

*(c) The Arbitration shall be confidential;*

*(d) The parties agree that also the mere existence of an arbitral proceeding shall be kept confidential except to the extent disclosure is required by law, regulation or an order of a competent court;*

*(e) The arbitral tribunal shall apply the CEAC Hamburg Arbitration Rules as in force at the moment of the commencement of the arbitration unless one of the parties requests the tribunal, within 4 weeks as of the constitution of the arbitral tribunal, to operate according to the CEAC Hamburg Arbitration Rules as in force at the conclusion of this contract."*

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---

- CEAC Managing Director -



Hamburg, 12 July 2012

*see p. 10, footnote 1 of the Application for Arbitration*

Dr. Arbitrator 1  
14 Advocate Way  
Oceanside, Mediterraneo  
Tel: (0) 614-1570  
Fax: (0) 614-1571  
[arbitrator1@lawyers.mb](mailto:arbitrator1@lawyers.mb)

- 

- 

- CEAC Managing Director -

CEAC GmbH- c/o Handelskammer Hamburg · Adolphsplatz 1 · 20457 Hamburg

**Per Mail and Courier**

Horace Fasttrack  
Advocate at the Court  
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Capital City, Mediterraneo

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**Mediterraneo Exquisite Supply, Co. v.  
Equatoriana Clothing Manufacturing, Ltd.**

Hamburg, 12 July 2012

**File No. 20120107**

Dear Mr. Fasttrack,

We acknowledge receipt (i) in our account of the administration fee and (ii) the advance of 100% of the arbitrators' fees in the trust account which CEAC has opened for this arbitration.

Please find enclosed a copy of CEAC's letter to Equatoriana Clothing Manufacturing, Ltd. which was sent out today.

Yours sincerely,

Dr. Management  
- CEAC Managing Director -

# CHINESE EUROPEAN ARBITRATION CENTRE



CEAC GmbH: c/o Handelskammer Hamburg · Adolphsplatz 1 · 20457 Hamburg

**Per Mail and Letter**  
**Personal and confidential**

Dr. Arbitrator 1  
14 Advocate Way  
Oceanside, Mediterraneo

arbitrator1@lawyers.mb

**CHINESE EUROPEAN ARBITRATION CENTRE GmbH**

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Adolphsplatz 1  
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e-mail: management@ceac-arbitration.com

**File No. 20120107**

Dear Ms. Arbitrator 2,

We are pleased to inform you that you have been appointed by Respondent as co-arbitrator in the above-referenced case. We are writing to inquire whether you accept this appointment. The basic information about the case is as follows:

Claimant	Mediterraneo Exquisite Supply, Co., 45 Commerce Road, Capital City, Mediterraneo
Representative	Horace Fasttrack, Advocate at the Court, 75 Court Street, Capital City, Mediterraneo
Respondent	Equatoriana Clothing Manufacturing, Ltd., 286 Third Avenue, Oceanside, Equatoriana
Representative	Joseph Langweiler, Lawyer, 14 Capital Boulevard, Oceanside, Equatoriana

Arbitrator nominated by Claimant: Dr. Arbitrator 1, 14 Advocate Way, Oceanside, Mediterraneo

Subject Matter: Breach of contract for the supply of clothing

Value: US \$ 2,127,500.00 (subject to final assessment)

Arbitration Clause      *“Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by institutional arbitration administered by the Chinese European Arbitration Centre (CEAC) in Vindobona, Danubia in accordance with the CEAC Hamburg Arbitration Rules.*

*(a) The number of arbitrators shall be three unless the amount in dispute is less than EUR 100,000 in which case the matter shall be decided by a sole arbitrator;*

*(b) The language to be used in the arbitral proceedings shall be English;*

*(c) The Arbitration shall be confidential;*

*(d) The parties agree that also the mere existence of an arbitral proceeding shall be kept confidential except to the extent disclosure is required by law, regulation or an order of a competent court;*

*(e) The arbitral tribunal shall apply the CEAC Hamburg Arbitration Rules as in force at the moment of the commencement of the arbitration unless one of the parties requests the tribunal, within 4 weeks as of the constitution of the arbitral tribunal, to operate according to the CEAC Hamburg Arbitration Rules as in force at the conclusion of this contract.”*

Arbitration Rules      CEAC Arbitration Rules (2012)

Please note, in particular, that under Article 11 of the CEAC Hamburg Arbitration Rules each arbitrator must be, and remain, independent of the parties involved in the arbitration. Accordingly please send us at your earliest convenience, and in any event no later than 19 August 2012, a Declaration of Acceptance and Statement of Independence and Impartiality.

Copies of the CEAC Rules and the CEAC Schedule of Costs are enclosed for your convenience. We will forward copies of all other documents after receipt of your Declaration of Acceptance and Statement of Independence and Impartiality.

We look forward to your early response.



# CHINESE EUROPEAN ARBITRATION CENTRE



Yours sincerely,

Prof. Dr. Management  
- *CEAC Managing Director* -

Encls: 1. The Arbitration Rules  
2. Schedule of Costs with Annex

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

4 August 2012

Chinese European Arbitration Centre  
Landgericht Hamburg  
Sievekingplatz 1  
20355 Hamburg  
Germany

Mediterraneo Exquisite Supply, Co. v. Equatoriana Clothing Manufacturing, Ltd.

Dear Sirs:

I represent Equatoriana Clothing Manufacturing, Ltd. in the arbitration brought by Mediterraneo Exquisite Supply, Co. My power of attorney is enclosed.

I hereby forward to you five copies of the statement of defense of Equatoriana Clothing Manufacturing, Ltd.

Equatoriana Clothing Manufacturing, Ltd. appoints Ms. Arbitrator 2 as party appointed arbitrator.

Sincerely,  
(Signed)  
Joseph Langweiler

Enclosures:  
Statement of defense  
Power of attorney  
CV of Ms. Arbitrator 2



9. In regard to paragraph 24, Respondent agrees that it denied that there had been a breach of contract on its part and refused to take back the polo shirts or to make arrangements for their disposal. Respondent has no independent knowledge as to the disposal of the polo shirts by Claimant. Furthermore, Respondent has no independent knowledge of the statements in paragraphs 25 to 29.

10. Respondent agrees that the arbitration agreement set out in paragraph 30 is what Respondent agreed to. Respondent also agrees that the clause governing the applicable law as set out in paragraph 31 is correct.

11. Although Respondent agrees that paragraph 32 is accurate, it does not agree that it is relevant that Mediterraneo made an Article 96 declaration when it ratified the United Nations Convention on Contracts for the International Sale of Goods (CISG). As set out in paragraph 31 of the Application for Arbitration, Claimant and Respondent jointly agreed that the governing law should be the CISG without regard to any national reservations. Moreover, even if there had not been such a specific choice of applicable law, the interpretation given to Article 96 by the courts of Mediterraneo would not be binding on this arbitral tribunal.

12. Respondent rejects the conclusions and claims advanced by the Claimant in paragraphs 33 to 38.

#### Legal arguments

13. The delivery date in the contract was amended orally to 24 February 2011 in the telephone conversation between Mr. Tomas Short of the Respondent and Mr. Russell Long of the Claimant. Under the choice of law provision in the contract the governing law was the CISG without regard to any reservations made by any party. Under the CISG article 11 a contract, and therefore its amendments as well, need not be evidenced by a writing.

14. The polo shirts delivered by the Respondent met every specification in the contract. There has been no allegation by the Claimant to any other effect. No child labor was involved in their manufacturer. Respondent cannot be responsible for the reaction of the public in Oceania to the television broadcast or the article in the Oceania Times that did not relate to the goods in question. Therefore, Respondent did not breach any of its obligations under CISG article 35 in regard to the polo shirts.

#### Request for relief

15. Respondent requests the tribunal to decide that all of the claims advanced by the Claimant are rejected. Respondent also requests that it be awarded the costs of arbitration.

(Signed)  
Joseph Langweiler

Respondent's Exhibit No. 1

Witness Statement of Mr. Tomas Short

I am a contracting officer at Equatoriana Clothing Manufacturing, Ltd. I was responsible for the contract with Mediterraneo Exquisite Supply, Co.

The contract required delivery to the port at Oceanside, Equatoriana by 19 February 2011. One of our suppliers failed to deliver the necessary supplies on time and by 9 February it had become clear that we would not be able to meet the 19 February delivery date. We could deliver to the port by 24 February.

On 9 February I telephoned Mr. Russell Long, the procurement officer at Mediterraneo Exquisite Supply, Co., who was responsible for the contract for them to inform him of the necessary delay in delivery to the 24th.

Mr. Long was very upset at the news. I was not surprised. He had indicated at the time we entered into the contract that this was a rush job in order to have the goods in the stores in Oceania in time for the opening of the summer selling season. Nevertheless, when he realized that there was no possibility of our meeting the contracted delivery date, he agreed to delivery by the later date and said I understood him to mean all three documents on paper, the contract, the shipping contract and the letter of credit. I remember his exact wording because after the end of the telephone call I realized that I had not asked him when I could expect to received the amended letter of credit. That was the only "paper work" reflecting the new date I expected to receive. The shipping contract was of no interest to me. That was his concern, not mine. It is rare that I receive an amendment to a contract in written form when it is a matter of a change in the delivery date of only a few days.

As expected, I received the amended letter of credit. The goods were shipped and the letter of credit was paid. As far as we were concerned, the contract had been successfully completed.

I was very surprised when Mr. Long telephoned me on 8 April 2011 and stated that Doma Cirun had withdrawn all of the polo shirts from its stores and had demanded that Mediterraneo Exquisite Supply, Co. dispose of them. Mr. Long was in turn demanding that Equatoriana Clothing Manufacturing, Ltd. take back the shirts or arrange to dispose of them. He told me that there had been a television broadcast showing children working in, among other facilities, one of our manufacturing plants. I told him that I was not authorized to respond to such a demand over the telephone. He said he was sending a letter to us avoiding the contract, which we would receive promptly by courier and a bit later in the post. I received the letter on 10 April 2011.

Since we knew what the letter would say before we received it, I had been authorized to reply to Mr. Long that we did not consider there had been any breach of the contract on our part, which I did by letter of 10 April 2011.

(Signed)  
Tomas Short  
Contracting Officer

18 August 2011

CEAC GmbH- c/o Handelskammer Hamburg - Adolphsplatz 1 - 20457 Hamburg

**Per Mail and Letter  
Personal and confidential**

Dr. Arbitrator 1  
14 Advocate Way  
Oceanside, Mediterraneo

Ms. Arbitrator 2  
414 University Avenue  
University City, Equatoriana

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**Appointment of the Presiding Arbitrator  
Mediterraneo Exquisite Supply, Co. v.  
Equatoriana Clothing Manufacturing, Ltd.  
File No. 20120107**

Dear Ms. Arbitrator 2 and Dr. Arbitrator 1,

We thank both of you for accepting appointment as Arbitrator in the reference case.

We confirm receipt of your respective Declaration of Independence and Impartiality,  
each being unqualified.

Please be advised of respective contact details as follows:

Dr. Arbitrator 1  
14 Advocate Way  
Oceanside, Mediterraneo  
Tel: (0) 614-1570  
Fax: (0) 614-1571  
[arbitrator1@lawyers.mb](mailto:arbitrator1@lawyers.mb)

Ms. Arbitrator 2  
414 University Avenue  
University City, Equatoriana  
Tel. (0) 975 14 38.  
Fax (0) 975 43 92  
arbitrator2@ue.eq.

Please be further advised that you should jointly appoint the third arbitrator who will act as Presiding Arbitrator (Article 9 para. 1 CEAC Hamburg Arbitration Rules refers).

You have **30 days from the receipt of this letter** to agree an appointment as Presiding Arbitrator (Article 9 para. 3 of the CEAC Hamburg Arbitration Rules refers).

We attach herewith a copy of Respondent's Statement of Defence dated 4 August 2012 which includes the appointment of Ms. Arbitrator 2.

Yours sincerely,

Prof. Dr. Management

- Encls: 1. Declaration of acceptance and statement of independence and impartiality of Mr. Arbitrator 1 and 2.
2. Statement of Defense and all further communication in this case to the extent that you have not yet received it.



Oceanside, Mediterraneo  
Tel: (0) 614-1570  
Fax: (0) 614-1571  
Email: [arbitrator1@lawyers.mb](mailto:arbitrator1@lawyers.mb)

22 July 2012

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

Mr. Joseph Langweiler  
Lawyer  
14 Capital Boulevard  
Oceanside, Equatoriana

Prof. Dr. Management  
Chinese European Arbitration Centre GmbH  
c/o Handelskammer Hamburg  
Adolphsplatz 1  
20457 Hamburg, Germany

Case No. 20120107

Dear Sirs:

Pursuant to the arbitration clause in the contract between Mediterraneo Exquisite Supply, Co. and Equatoriana Clothing Manufacturing, Ltd. and to the Chinese European Arbitration Centre arbitration rules, Ms. Arbitrator 2 and I have consulted concerning the person who should serve as the chairman of the arbitral tribunal.

We have decided to appoint Professor Presiding Arbitrator as chairman of the tribunal. Professor Presiding Arbitrator's address can be found in his CV, which is attached.

Sincerely,

(Signed)  
Ms. Arbitrator 1

Cc: Professor Arbitrator 2

Encl: CV Professor Presiding Arbitrator

**Per Mail and Letter  
Personal and confidential**

**Appointment as an arbitrator  
Mediterraneo Exquisite Supply, Co. v.  
Equatoriana Clothing Manufacturing, Ltd.  
File No. 20120107**

Hamburg, den 27 August 2012

*Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by institutional arbitration administered by the Chinese European Arbitration Centre (CEAC) in Vindobona, Danubia in accordance with the CEAC Hamburg Arbitration Rules.*

*(a) The number of arbitrators shall be three unless the amount in dispute is less than EUR 100,000 in which case the matter shall be decided by a sole arbitrator;*

*(b) The language to be used in the arbitral proceedings shall be English;*

*(c) The Arbitration shall be confidential;*

*(d) The parties agree that also the mere existence of an arbitral proceeding shall be kept confidential except to the extent disclosure is required by law, regulation or an order of a competent court;*

*(e) The arbitral tribunal shall apply the CEAC Hamburg Arbitration Rules as in force at the moment of the commencement of the arbitration unless one of the parties requests the tribunal, within 4 weeks as of the constitution of the arbitral tribunal, to operate according to the CEAC Hamburg Arbitration Rules as in force at the conclusion of this contract."*

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- *CEAC Managing Director* -

Arbitrator 1  
14 Advocate Way  
Oceanside, Mediterraneo  
Tel: (0) 614-1570  
Fax: (0) 614-1571  
[arbitrator1@lawyers.me](mailto:arbitrator1@lawyers.me)

30 August 2012

Prof. Dr. Management  
Chinese European Arbitration Centre GmbH  
c/o Handelskammer Hamburg  
Adolphsplatz 1  
20457 Hamburg, Germany

Case No. 20120107

Dear Prof. Dr. Management:

I enclose the requested Declaration of Acceptance and Statement of Independence to serve as arbitrator in the above referenced arbitration.

Sincerely yours,  
(Signed)  
Arbitrator 1

Encl.

Declaration of Acceptance and Statement of Independence

NOTE; A similar letter accompanied by the Declaration were sent by the two other arbitrators.

CEAC GmbH: c/o Handelskammer Hamburg · Adolphsplatz 1 · 20457 Hamburg

**Per Mail and Courier**

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

Joseph Langweiler  
Lawyer  
14 Capital Boulevard  
Oceanside, Equatoriana

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**Mediterraneo Exquisite Supply, Co. v.  
Equatoriana Clothing Manufacturing, Ltd.**

Hamburg, 6 September 2012

**File No. 20120107**

Dear Mr Fasttrack and Mr Langweiler,

Please be advised that in the referenced case the arbitral tribunal has now been fully constituted. The tribunal comprises the following arbitrators:

Presiding Arbitrator:

**Professor Presiding Arbitrator**

Wise, Strong & Clever  
25 Court Street  
Vindobona, Danubia  
Tel. (0) 230 4580  
Fax. (0) 230 4581  
[Wise@msclaw.da](mailto:Wise@msclaw.da)

Co-arbitrators:

Appointed by Claimant:

**Dr. Arbitrator 1**

# CHINESE EUROPEAN ARBITRATION CENTRE



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

Appointed by Respondent:

**Ms. Arbitrator 2**  
414 University Avenue  
University City, Equatoriana  
Tel. (0) 975 14 38.  
Fax (0) 975 43 92  
arbitrator2@ue.eq.

*Please find enclosed all documentation in this case which you have not yet received.*

Please note that a party who wishes to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator or within 15 days after the circumstances mentioned in Article 11 and 12 of the CEAC Hamburg Arbitration Rules became known to the party (Article 13 of the CEAC Hamburg Arbitration Rules refers).

The parties should correspond directly with the tribunal and send copies of all correspondence (i) to the other party and (ii) to CEAC (Article 3 para. 6 sentence 3 of the CEAC Hamburg Arbitration Rules refers).

Yours sincerely,

Prof. Dr. Management  
- CEAC Managing Director -

- Enclosures -

Procedural Order No. 1

in the arbitration

Mediterraneo Exquisite Supply, Co., Claimant

v.

Equatoriana Clothing Manufacturing, Ltd., Respondent

I. Summary of the arbitral procedure so far.

1. The tribunal decided during a conference call on 2 October 2012 that the Presiding Arbitrator was authorized to make procedural decisions subject to later confirmation by the full tribunal.

2. A conference call was arranged for 4 October 2012 between Mr. Fasttrack, Mr. Langweiler and the Presiding Arbitrator of the tribunal to discuss the arrangements for the arbitral procedure.

3. During the conference call both Counsel reported about their clients' interest in arguing the issue of delay of delivery even though the damages claimed because of the delivery of the polo shirts to the port at Oceanside, Equatoriana were rather small in comparison with the other damages claimed. Their clients wished there to be full arguments on all the issues that would arise in regard to them. The clients were aware that more might be spent on legal fees and the cost of arbitration than the amount of the claim for damages for delay.

4. Mr. Fasttrack said that he would like Mr. Tomas Short to appear at an oral hearing before the tribunal in order to question him in regard to his witness statement. Mr. Langweiler replied that it would not be possible. Mr. Short had left the employ of Equatoriana Clothing Manufacturing. Mr. Langweiler said that after Mr. Fasttrack had told him that he planned to call Mr. Short to testify, he had contacted Mr. Short. Mr. Short had told him that his new employer did not wish him to be involved any further in matters concerning Equatoriana Clothing Manufacturing and specifically had told him not appear before the tribunal if he was called. Mr. Langweiler further said that he had told this to Mr. Fasttrack and said that he would be pleased if Mr. Fasttrack were to contact Mr. Short and urge him to come, but that Mr. Fasttrack had refused to do it saying that it would be Mr. Langweiler's responsibility to bring him to the hearing. Mr. Fasttrack confirmed that he had said this.

5. Mr. Fasttrack requested the Presiding Arbitrator to rule as a procedural matter that the witness statement of Mr. Short would not be considered by the tribunal because Mr. Short would not be available for examination. Mr. Langweiler said that under the circumstances



where it would not be possible for him to cause Mr. Short to come to a hearing of the tribunal, the tribunal should consider the witness statement despite his absence. The Presiding Arbitrator ruled that it was an issue that should be argued before the full tribunal.

6. Mr. Fasttrack also requested the Presiding Arbitrator to rule that, because of the reservation under CISG article 96 made by Mediterraneo and the interpretation given to the reservation by the Supreme Court of Mediterraneo, the alleged amendment to the contract in regard to the delivery date had to be in writing. The Presiding Arbitrator said that this was not a procedural question that was within his authority to decide. Instead it should be addressed by the Parties in their submissions.

7. Mr. Fasttrack also raised the point that, even according to Mr. Short's witness statement, Mr. Long had not said explicitly that he would amend the contract in regard to the delivery date. Mr. Langweiler said that Mr. Short had understood that all the paper work that would be taken care of included the delivery date in the contract. He argued that that was the natural conclusion to be reached, that anyone in Mr. Short's position would understand. The Presiding Arbitrator said that this was another question that should be argued before the full tribunal.

8. Mr. Fasttrack and Mr. Langweiler agreed that for the purposes of the arbitration, it would be assumed, but without any admission by Equatoriana Clothing, (i) that the latter had in fact used child labor in at least one of its plants but that (ii) no child labor had been used in the production of the polo shirts the subject of the contract. They further agreed that they would be prepared to argue whether Equatoriana Clothing Manufacturing had breached the contract by using child labor in its operations, despite such usage not being in connection with the production of the polo shirts that were the subject matter of the contract. In return neither Party will ask the arbitral tribunal or any other third party to engage in further investigations as to the use of child labour.

9. They also agreed that they would not argue in the first stage of the arbitration any issues in regard to the quantum of damages arising out of the breach, if the tribunal were to decide that there had been such a breach. Similarly, they would leave to later the allocation of the costs of arbitration.

## II. Orders

10. In light of the above discussions the Arbitral Tribunal makes the following orders in relation to the issues to be addressed by Counsel in their memoranda and the oral hearing as well as to the clarifications needed and the timing:

1. Counsel should address the issue of delay in delivery
2. Counsel should address the issue of whether the witness statement of Mr. Short should be considered by the tribunal if he is not available for examination at an oral hearing. In their arguments reference may be made to the IBA Rules of Evidence though their relevance remains controversial between the Parties.

3. Counsel should address the issue whether the tribunal should follow the interpretation given to the Mediterraneo reservation to article 96 and the interpretation given to it by the Supreme Court of Mediterraneo.
4. Counsel should address the issue as to whether Mr. Long should be considered to have agreed to an amendment of the delivery date in the contract when he said he would “make sure that all of the paper work reflected the new delivery date.”

11. The factual issues that may need to be developed will be determined in accordance with the procedures found in the Rules of the Twentieth Annual Willem C. Vis International Commercial Arbitration Moot. In accordance with those Rules questions may be submitted to Professor Eric Bergsten by e-mail at [eric.bergsten@chello.at](mailto:eric.bergsten@chello.at), by Thursday, 25 October 2012. The answers to the requests for clarification will be distributed in Procedural Order No. 2 as promptly thereafter as possible.

12. The following schedule was agreed: