

## **Annex 4**

### **INTERNATIONAL ARBITRATION CHAMBER FOR FRUITS AND VEGETABLES**

#### **REGULATIONS**

**according to the decision of the General Meeting of the 30<sup>th</sup> May 1997  
becoming effective on the 1<sup>st</sup> June 1997**

#### **Introduction:**

**The purpose of the International Arbitration Chamber for Fruits and Vegetables (according to the decision of the 23.12.1982) is to provide a swift and economic procedure of settlement of any commercial dispute which arises in the trade of fruits, vegetables, fresh and edible early produces, and manufactures produces.**

#### **Article 1**

a) head-office of the International Arbitration Chamber for Fruits and Vegetables is based in STRASBOURG/FRANCE. The decisions taken by the Arbitration Chamber are always considered as being taken at the head-office of the Arbitration Chamber, wherever the hearing is held.

The secretary-office is presently based at the following address:

Chambre Arbitrale Internationale pour les Fruits et Légumes

Schedestr. 11

53113 BONN – GERMANY

b) The Arbitration Chamber is presided over by the President and Vice-President appointed by the board of directors of the Association of the Arbitration Chamber, in conformity with article 11 of the Statutes of the Association of the Arbitration Chamber. The president of the Arbitration Chamber also appoints the Secretary-General.

c) The Secretary-General of the Arbitration Chamber investigates all disputes brought before it by plaintiffs against defendants whatever their country of origin.

#### **Article 2**

The secretariat of the Arbitration Chamber is currently based in BONN – GERMANY. In principle, the hearings are to be held in this town. However, for various reasons, they may be held elsewhere. The parties may make proposals in this respect. The final decision is taken by the President of the Arbitration Chamber. In that case, the plaintiff who has requested that the hearing be held somewhere else, will pay the travel expenses of the Arbitration Court.

**Article 3**

The national professional organisations of producers and wholesale trade organisations, members of the Association of the Arbitration Chamber will appoint for each country 10 to 30 arbitrators.

**Article 4**

The President of the Arbitration Chamber settles all the administrative issues of the Arbitration Chamber in conformity with its regulations. Should the President be prevented from coming, he will be replaced by the Vice-President. He may delegate his power to the Secretary-General.

**Article 5**

The national groups which appoint the arbitrators may remove from office anyone who shall have committed serious breaches of his duties.

**Article 6**

a) In each case, the arbitrators and the President constituting the Arbitration Court are appointed by the President of the Arbitration Chamber, on the list or off the list of arbitrators, if the President deems it necessary. In first proceedings, the Arbitration Court is composed by 3 arbitrators including a President who shall supervise the hearings.

b) If the value in dispute is lower than 10.000 ECU, the Arbitration Court is constituted by a single arbitrator.

c) The arbitrators are bound to fulfil their proxy unless they are relieved from doing so by the President, who appoints the deputy.

d) Should an arbitrator be prevented from appearing, he may immediately be replaced by another arbitrator appointed by the President of the Arbitration Chamber even if he is not on the list arbitrators.

e) The Arbitration Chamber will inform in writing the parties of any change in the composition of the Arbitration Court occurring during the proceedings.

**Article 7**

An arbitrator may be challenged on the same grounds as a judge. In particular, he must not be related or allied to the parties, or have a vested interest in the outcome of the dispute.

After receipt of the appointment notified by the secretariat, the application for impugment must be addressed to the secretariat of the Arbitration Chamber as soon as the party which relies on it knows about the reason for impugment.

**Article 8**

The Arbitration Chamber will take cognisance of:

- disputes arising from a contract where a special clause expressly provides for its jurisdiction,
- disputes the parties may jointly submit for arbitration to the Arbitration Chamber.

**Article 9**

The Arbitration Court decides in each individual case whether it is competent or not. It may, prior to initiating the proceedings, request of both parties to sign a compromise. Nevertheless, if one refuses to do so, it is nevertheless entitled to give a valid ruling, provided that the dispute in question falls into the category provided for in paragraph 1 article 8k.

**Article 10**

Failing a special agreement, the Arbitration Court declares itself as acting in the capacity of *amiable compositeur* (compounder). Adoption of the clause assigning jurisdiction to the Arbitration Chamber implies relinquishment of the right to make appeal before the ordinary Court of law.

**Article 11**

Any application for arbitration must be made in writing in five copies and addressed to the secretariat of the Arbitration Chamber which informs the President.

The application must contain:

- a) a brief statement of the object of contention, with supporting documents,
- b) details of the evidence, if any
- c) the applicant's precise claims against the defendant.

On receipt of the application for arbitration, the Secretary-General of the Arbitration Chamber addresses to the plaintiff a request for payment of arbitration retaining fees calculated according to the fee scale mentioned in article 32.

**Article 12**

The defendant who puts in a counterclaim has to pay arbitration retaining fees in the same conditions as the main plaintiff.

**Article 13**

After payment of the statutory advance by the plaintiff, the claim is notified to the defendant by the secretariat by registered letter with acknowledgement of receipt, accompanied by the compromise.

The defendant is invited to make his means of defence and evidence known within 4 weeks or within the time-limits specified by the President, as well as the name of any expert or witness and to file his submissions with a court, with supporting documents.

**All these documents must be supplied in 5 copies.**

If the defendant fails to respond to this invitation within a time allowed, the Arbitration Court may settle the dispute according to the terms provided for in article 15.

Following receipt of the defendant's written statement of case or expiry of the time allowed, the parties are summoned to a hearing.

**Article 14**

The parties may request one adjournment only, to be submitted to the secretariat of the Arbitration Chamber. The President of the Arbitration Chamber for Fruits and Vegetables is free to accept or reject this request. He may grant one adjournment only, except on exceptional circumstances or otherwise agreed by the two parties. If it has not been possible to notify the arbitrators at least 3 days in advance, any expense payable to them shall be borne by the party who has requested the adjournment.

**Article 15**

At the hearing, the Arbitration Court hears the two parties and investigates the facts which constitute the heart of the dispute. The preliminary investigation at the hearing is conducted orally. The parties should appear in person. They may however arrange for themselves to be represented or assisted by a proxy armed with a written power of attorney. Yet barristers do not need a power of attorney. In the absence of a proxy, they may submit a written statement of case to the Arbitration Court in order to support their claim or to present their defence.

**Article 16**

If the parties or one of the parties fail to appear at the hearing despite being summoned in the proper manner, the Arbitration Court may rule on the evidence.

**Article 17**

The Arbitration Court may hear witnesses and experts; it may also, in order to ascertain the condition and quality of the disputed merchandise, order any inquiry and the taking of samples and in general, any measure which it deems likely to clarify the fact of this case.

**Article 18**

The Arbitration Court shall first seek to reconcile the parties. If a compromise is reached, minutes shall be drawn up. This document shall be signed by the parties and the Arbitration Court and will serve as an award approving the agreement between the parties. If an amicable arrangement has not been possible, the arbitrators shall make their award.

**Article 19**

The awards pronounced by the Arbitration Court, as well as all its decisions, shall be renounced by a majority vote.

**Article 20**

The arbitration award must contain:

- the names, occupations (for individuals) and domiciles of the parties.
- The names of the arbitrators who made it and the date on which the judgement was delivered.
- an indication of the grounds
- the outcome of the dispute and the order to pay costs

**Article 21**

The parties may request the arbitrators to incorporate in the award an order for provisional enforcement of the award, notwithstanding appeal before the Arbitration Court of Appeal.

**Article 22**

The arbitration award must be signed by the arbitrators. A signed certified copy will then be notified to the parties by registered letter with acknowledgement of receipt. The award shall be filed with the clerk's office of the competent court only on request of the party that wishes to have the award to be enforced.

**ACTION FOR WARRANTY****Article 23**

A party which claims to have an action for warranty against a third party may implicate the latter in the case. The guarantor may, in turn, implicate another guarantor and so forth.

If the guarantor agrees to become a party to the dispute, the Arbitration Court may, in the same award, rule jointly on the original application and on the action for warranty.

**URGENT PROCEDURE****Article 24**

May be declared urgent:

- disputes concerning perishables or goods which are sensitive to atmospheric changes;
- disputes concerning goods which are subject to sudden fluctuations in price or liable to parking or storage fees;
- claims against a debtor who is presumed to be insolvent;
- claims requiring by nature an immediate solution.

**Article 25**

The declaration of urgency is made at the reasoned request of the plaintiff, by decision of the President of the Arbitration Chamber.

**Article 26**

Any case declared urgent will be heard within maximum a fortnight following decision by the President. This period may be extended by another fortnight if one of the parties is domiciled in a non-European country.

The parties will be summoned by registered letter with acknowledgement of receipt or registered letter by express delivery.

**Article 27**

Any increase in costs resulting from the urgent nature of the proceedings will be borne by the plaintiff in the Arbitration Court responsible for handling the dispute deems the urgency not actually justified.

**APPEAL****Article 28**

The parties are entitled to appeal against the award of the first proceedings before the Arbitration Court of Appeal. The appeal may be a main appeal or a cross appeal.

**Article 29**

The Arbitration Court of Appeal comprises 5 arbitrators including a President appointed on the list or off the list for each individual case by the President of the Arbitration Chamber. However, the Arbitration Court of Appeal comprises only 3 arbitrators appointed on the list, if the dispute has been heard in first proceedings by a sole arbitrator. The arbitrators who pronounced the contested award cannot act as appeal arbitrator in the same case.

**Article 30**

The main appeal must be addressed in writing to the Arbitration Chamber and reach it within a clear fortnight following receipt of the award by registered letter. If a party lodges an appeal, the secretariat of the Arbitration Chamber shall immediately inform the other party which in its turn will have a clear fortnight from the receipt of the main appeal onwards to lodge an appeal in its turn.

**Article 31**

The provisions of articles 6,7,12 to 21 and 23 shall likewise apply to proceedings before the Arbitration Chamber of Appeal (except for the appointment of arbitrators which shall be carried out as provided for in article 29).

## **COSTS**

### **Article 32**

1) The costs of procedure paid to the Arbitration Chamber are calculated as follows:

- a) An amount of 2.000 FF will be paid in each case for administrative costs;
- b) An all inclusive price of 5.000 FF will be paid whatever the value in dispute;

to which to add

10 % as arbitration retaining fees for any value in dispute in respect of 1 Million FF, increased by

- 5 % as arbitration retaining fees for any value in dispute beyond 1 Million FF.

Beyond 1 Million FF.

2) In case of emergency procedure, arbitration costs will be increased by 100 %.

3) In case of appeal procedure, arbitration costs will be increased by 50 %.

### **Article 33**

If a dispute ends with a compromise, each party shall bear half of the costs of proceedings, unless otherwise indicated.

### **Article 34**

In case of withdrawal of the application before the hearing, the plaintiff will pay one third of the costs provided for in article 32 as well as the arbitration fees, unless the arbitrators have been informed of the withdrawal 10 days before the hearing.

If the application is withdrawn less than 10 days before the hearing, the arbitration retaining fees shall be paid in full.

### **Article 35**

If the settlement of the dispute is delayed because of one of the parties, the costs of postponing the case or adjourning the Court hearing shall be borne by the party responsible.

### **Article 36**

The arbitration costs are borne by the party which loses the case, unless otherwise provided for in an award.

**Article 37**

Any main plaintiff will guarantee payment of the costs incurred by the Arbitration Chamber and shall deposit the advance as provided for in article 32.