

**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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Capital City, Mediterraneo  
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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.

6. Oceania Plus is known for its high ethical standards, which feature prominently on its website and in its public relations and other communications. Atlantica Megastores owns a chain of megastores in Atlantica and several other countries. The stores sell casual clothing, among many other products.

7. Exquisite is one of fifteen jointly owned subsidiaries of Oceania Plus and Atlantica Megastores that contract with manufacturers of the clothing needed by them. When Oceania Plus or Atlantica Megastores needs a particular quantity of a particular style of clothing that Exquisite should procure for it, a normal sale/purchase contract is entered into between Oceania Plus or Atlantica Megastores and Exquisite. A normal sales contract is similarly entered into between the retail chains, such as Doma Cirun, and Exquisite. In this regard the companies act independently of one another. Independent treatment is required by the authorities in Oceania, Atlantica and Mediterraneo, and particularly by the respective tax authorities.

8. On 2 January 2011 Doma Cirun learned that the manufacturer contracted to produce “Yes Casual” polo shirts for it for the 2011 summer season had become bankrupt and the shirts would not be delivered. Yes Casual was the Doma Cirun house brand for sportswear and other quality casual clothing. It was widely promoted under the advertising slogan “Yes for Casual”. The bankruptcy was particularly unfortunate, since polo shirts are an important item in the stock of a clothing retailer for the summer season in Oceania and because the procurement of the substitute shirts would now be a rush job. Doma Cirun immediately contacted Oceania Plus subsidiaries that contract with the relevant manufacturers to search for one that would be able to handle the order in time.

9. Exquisite canvassed the manufacturers in its area that produce polo shirts and found that Equatoriana Clothing Manufacturing, Ltd. (hereafter Equatoriana Clothing) was one of three manufacturers that would be able to handle the order on a rush basis. Exquisite had contracted with Equatoriana Clothing in the past, but not since April 2008. As a matter of Oceania Plus policy, all members of the group contracting with third party manufacturers were required to audit the manufacturing firms to ensure that they conformed to Oceania Plus policies in regard to ethical and other matters. In regard to this dispute the policies covered labor matters and especially the use of child labor. The audits covered not only the manufacturers themselves, but also the subcontractors that the manufacturers used. The last audit conducted by Exquisite of Equatoriana Clothing had taken place in connection with the 2008 contract. There had been several items in the audit that had caused some concern, including suspicions that child labor was employed by Equatoriana Clothing, but the evidence of the use of child labor was not clear. All of the items of concern were discussed with Equatoriana Clothing before the audit was approved.

10. Two other manufacturers contacted by Exquisite could have handled the order but at a higher price than Equatoriana Clothing. Therefore, Exquisite decided to contract with Equatoriana Clothing. A contract was duly signed between Exquisite and Equatoriana Clothing on 5 January 2011. (Claimant’s Exhibit No. 1) The contract between Exquisite and Doma Cirun was signed two days later, 7 January 2011.

11. 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.

12. 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.

13. 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.

14. 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)

15. 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.

16. 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)

17. 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.

18. 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, the television program condemned both Oceania Plus and Doma Cirun in strong terms for dealing with such a firm.

19. This was followed on 8 April 2011 when the Oceania Times, the leading newspaper in Oceania, published an investigative article concerning the use of child labor in the supply chains of leading firms, both national and international, especially in the technology and clothing industries. (Claimant's Exhibit No. 4) The article traced the history of the efforts to combat the use of child labor, including the work by the International Labour Organization leading to the adoption of the Convention on the Worst Forms of Child Labour in 1999 (ILO Convention No. 182) and the Organization's subsequent work in this regard. It described the leading role that Oceania had taken in the work leading to the Convention and that it had been one of the first countries to ratify it. The work of Oceania in this regard had been strongly supported by the business community and the leading civic organizations. Among them mentioned in the article was the Children Protection Fund of Oceania. Moreover, many leading firms in Oceania, including Oceania Plus, participate in the United Nations Global Compact. The Compact lists ten principles, among which [Principle 5](#) is "the effective abolition of child labour."

20. As noted above, the country of Oceania prides itself on its policy of being very "ethical", which explains both the leading role taken by Oceania in the work leading to the ILO Convention and the strong public reaction in Oceania to the television program and the article in the Oceania Times. Immediately upon the broadcast of the television program there were demonstrations at the Doma Cirun stores throughout the country, which continued for the following two weeks. On 6 April sales in Doma Cirun stores were 30% below those of the previous year and the drop in sales became progressively lower the following two days. There was an additional drop after the publication of the article in the Oceania Times, with sales now running about 50% below the previous year. There were almost no sales of Yes Casual polo shirts.

21. Further consequences included:

- Oceania Plus's share price dropped 25%, wiping hundreds of millions of dollars of value off its stock market valuation;
- the Prime Minister of Oceania called on Oceania Plus to take urgent action;
- the Children Protection Fund of Oceania, which had a major investment in Oceania Plus shares in its investment portfolio, announced its intention to sue Oceania Plus and its directors for its losses and for the damage to its reputation;



- 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.

22. 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)

23. 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)

24. 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®2010 Port City, Oceania.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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

30. 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

31. 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.

32. 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

33. 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.

34. The polo shirts were not fit for the particular purpose for which they were purchased, namely for resale in Oceania. Equatoriana Clothing specifically knew the purpose for which they had been purchased. It also knew from the audit made of the firm in 2007, the subsequent discussions before the audit was approved and article 12 of the contract that it was of great importance in Oceania that the goods were produced in an ethical manner and, specifically, that child labor was not used by Equatoriana Clothing.

35. The use of child labor by Equatoriana Clothing constituted a fundamental breach of the contract. Consequently, in conformity with CISG art. 49 Exquisite had the right to avoid the contract. Pursuant to CISG arts. 81-84 Exquisite claims restitution of the purchase price of USD 550,000.

36. As additional damages Exquisite claims reimbursement of

- USD 850,000 paid to Doma Cirun as settlement of the law suit brought by Doma Cirun;
- USD 700,000 paid to Oceania Plus as settlement of the law suit brought by Oceania Plus.

37. The total claimed by Exquisite is USD 2,127,500, consisting of:

- USD 27,500 for late delivery of the polo shirts;
- USD 550,000 reimbursement of the purchase price;
- USD 850,000 settlement with Doma Cirun;
- USD 700,000 settlement with Oceania Plus.

38. Exquisite also claims interest and the costs of arbitration.

(Signed)

Horace Fasttrack

Counsel for Mediterraneo Exquisite Supply, Co.

1 July 2012

## 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 credit 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 19.)

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**

c/o Handelskammer Hamburg  
Adolphsplatz 1  
20457 Hamburg, Germany

Tel.: + 49-(0)40-668640-85

Fax: + 49-(0)40-668640-699

e-mail [management@ceac-arbitration.com](mailto:management@ceac-arbitration.com)

**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**

## CHINESE EUROPEAN ARBITRATION CENTRE



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



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**  
c/o Handelskammer Hamburg  
Adolphsplatz 1  
20457 Hamburg, Germany

Tel.: + 49-(0)40-668640-85  
Fax: + 49-(0)40-668640-699

e-mail management@ceac-arbitration.com

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

Hamburg, den 6 July 2012

Dear Dr. Arbitrator 1,

We are pleased to inform you that you have been appointed by Claimant 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	to be advised
Subject Matter	Breach of contract for the supply of clothing
Value	US \$ 2,127,5000 (subject to final assessment)
Arbitration Clause	<i>“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)”</i>

*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 July 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

Yours sincerely,

Prof. Dr. Management  
- CEAC Managing Director -

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

# CHINESE EUROPEAN ARBITRATION CENTRE



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

## **Per Courier**

Equatoriana Clothing Manufacturing, Ltd.  
286 Third Avenue  
Oceanside, Equatoriana

## **CHINESE EUROPEAN ARBITRATION CENTRE GmbH**

c/o Handelskammer Hamburg  
Adolphsplatz 1  
20457 Hamburg, Germany

Tel.: + 49-(0)40-668640-85

Fax: + 49-(0)40-668640-699

e-mail [management@ceac-arbitration.com](mailto:management@ceac-arbitration.com)

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

Hamburg, 12 July 2012

**File No. 20120107**

Dear Sirs,

We hereby notify you that

Mediterraneo Exquisite Supply, Co.  
45 Commerce Road  
Capital City, Mediterraneo

submitted a Notice of Arbitration, citing your Company as Respondent, to the Chinese European Arbitration Centre (CEAC) on 1 July 2012, The Notice of Arbitration serves as the Claimant's Statement of Claim.

We advise as follows:

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

CEAC has accepted 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

The administration fees have duly paid by the Claimant to our account.

You will be required to bear half of the advance on costs for the arbitrators' fees according to Art. 43 para. 2 of the CEAC Hamburg Arbitration Rules (EUR 37,906). We will shortly issue an invoice for this amount.

## IV. Appointment of Arbitrators

Please be advised that Claimant has appointed as Arbitrator:

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

Please be advised that you have **thirty (30) days after the receipt of this letter**, which includes Claimant's notification of the appointment of an arbitrator, to appoint an arbitrator (Article 9 para. 1, 2 of the CEAC Hamburg Arbitration Rules). If you fail to meet this deadline, the Claimant may request CEAC as Appointing Authority to appoint the second arbitrator.

## V. Response

Pursuant to Article 4 of the CEAC Hamburg Arbitration Rules, you are herewith asked to respond to the Notice of Arbitration/Statement of Claim to the Claimant and to CEAC within **thirty (30) days after the receipt of this letter**.

Please advise both CEAC and the Claimant of the name and contact details of your representative in this arbitration. Article 5 of the CEAC Hamburg Arbitration Rules refers.

**VI. Further Information**

According to Article 3 para. 6 of the CEAC Hamburg Arbitration Rules please provide us with

- documentation demonstrating the existence of your company and the designation of the legal representative, e.g. an excerpt from the commercial register, if applicable, or a certificate of good standing, and (as applicable)
- two originals of a power of attorney duly signed by the designated legal representative.

Yours sincerely,

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

Encls: 1. The Arbitration Rules

2. Schedule of Costs with Annex

3. Two copies of the Application for Arbitration and Statement of Claim of 1 July 2012

4. Copy of CEAC's letters to Claimant dated 6 and 12 July 2012

5. Copy of CEAC's letter sent to Dr. Arbitrator 1.

# CHINESE EUROPEAN ARBITRATION CENTRE



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**

c/o Handelskammer Hamburg  
Adolphsplatz 1  
20457 Hamburg, Germany

Tel.: + 49-(0)40-668640-85

Fax: + 49-(0)40-668640-699

e-mail [management@ceac-arbitration.com](mailto:management@ceac-arbitration.com)

**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 Courier**

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

**CHINESE EUROPEAN ARBITRATION CENTRE GmbH**  
c/o Handelskammer Hamburg  
Adolphsplatz 1  
20457 Hamburg, Germany

Tel.: + 49-(0)40-668640-85  
Fax: + 49-(0)40-668640-699  
e-mail management@ceac-arbitration.com

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

Hamburg, 7 August 2012

**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

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

Mediterraneo Exquisite Supply, Co., Claimant

v.

Equatoriana Clothing Manufacturing, Ltd., Respondent

### Statement of Defense

1. Respondent agrees that the names and addresses given in paragraphs 1 to 4 are correct.

2. Respondent has no independent knowledge as to the facts alleged in the statements in paragraphs 5 to 8 of the application for arbitration.

3. In regard to paragraph 9, while it is correct that there were discussions about the audit results, which is normal, and that one of the issues raised was in regard to child labor, which is also normal following an audit in this area of the world, Respondent has no independent knowledge as to whether Claimant's characterization of the audit results as having "caused some concern" at the time is factually accurate.

4. In regard to paragraph 10, Respondent does not know whether Claimant found two other manufacturers that could have handled the order. Nor does it know whether Claimant contracted with Respondent because it offered a lower price.

5. Further in regard to paragraph 10, it is correct that a contract was signed on 5 January 2011. Respondent does not know when Claimant signed a contract with Doma Cirun.

6. Respondent agrees with paragraphs 11 to 13.

7. Respondent agrees with all but the last three sentences of paragraph 14 and with paragraph 15. At the end of the telephone conversation described in paragraph 14, Mr. Long said that he would "make sure that all of the paper work reflected the new delivery date." (Respondent's Exhibit No. 1) It was clear to Mr. Short that all three documents, the contract, the shipping contract and the letter of credit would reflect the new date. Mr. Short expected to receive an amended letter of credit and one was received. He did not expect to receive a copy of the shipping contract between Claimant and the carrier, nor did he expect to receive a physical amendment to the contract of sale, since oral amendments to contracts are enforceable under the CISG and are normal practice.

8. Respondent has no independent knowledge as to the facts alleged in the statements in paragraphs 16 to 22, except that the polo shirts arrived at the port on 24 February 2011.

9. In regard to paragraph 23, Respondent agrees that it received a notice of avoidance of the contract by Claimant in a letter dated 8 April 2011. The letter was received on 10 April 2011. Respondent has no independent knowledge whether it was "immediately" upon receipt by Claimant of a notice of avoidance by Doma Cirun.

10. 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.

11. 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.

12. 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.

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

#### Legal arguments

14. 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.

15. 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

16. 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 that he would make sure that all the paper work reflected the new delivery date. 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

**CHINESE EUROPEAN ARBITRATION CENTRE GmbH**

c/o Handelskammer Hamburg  
Adolphsplatz 1  
20457 Hamburg, Germany

Tel.: + 49-(0)40-668640-85  
Fax: + 49-(0)40-668640-699

e-mail [management@ceac-arbitration.com](mailto:management@ceac-arbitration.com)

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

Hamburg, den 7 August 2012

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  
- *CEAC Managing Director* -

- 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.



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

22 August 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)  
Dr. Arbitrator 1

Cc: Ms. Arbitrator 2

Encl: CV Professor Presiding Arbitrator

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

**Per Mail and Letter**

**Personal and confidential**

Professor Presiding Arbitrator

Wise, Strong & Clever

25 Court Street

Vindobona, Danubia

Wise@msclaw.da

**CHINESE EUROPEAN ARBITRATION CENTRE GmbH**

c/o Handelskammer Hamburg

Adolphsplatz 1

20457 Hamburg, Germany

Tel.: + 49-(0)40-668640-85

Fax: + 49-(0)40-668640-699

e-mail [management@ceac-arbitration.com](mailto:management@ceac-arbitration.com)

**Appointment as an arbitrator**

**Mediterraneo Exquisite Supply, Co. v.**

**Equatoriana Clothing Manufacturing, Ltd.**

**File No. 20120107**

Hamburg, den 27 August 2012

Dear Professor Presiding Arbitrator,

We are pleased to advise you that you have been appointed as Presiding Arbitrator by the arbitrators appointed, respectively, by Claimant and Respondent in the referenced case. We are writing to enquire 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

Arbitrator nominated by Respondent: Ms. Arbitrator 2, 414 University Avenue, University  
City, Equatoriana

Subject Matter Breach of contract for supply of clothing  
Value US \$ 2,127,5000 (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 may we kindly ask you to send us at your earliest convenience, and in any event no later than 15 September 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

Professor Presiding Arbitrator  
Wise, Strong & Clever  
25 Court Street  
Vindobona, Danubia  
Tel. (0) 230 4580  
Fax. (0) 230 4581  
Wise@msclaw.da

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)  
Professor Presiding Arbitrator

Encl.

Declaration of Acceptance and Statement of Independence

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

# CHINESE EUROPEAN ARBITRATION CENTRE



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  
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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.”
5. Counsel should address the issue as to whether Mediterraneo Exquisite Supply had grounds to avoid the contract and claim damages.

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:

Submission of a memorandum for claimant: 6 December 2012  
Submission of a memorandum for respondent: 17 January 2013

Oral arguments in Hong Kong: 11 – 17 March 2013  
Oral arguments in Vienna: 22 -28 March 2013

(Signed)  
Professor Presiding Arbitrator  
President of the arbitral tribunal

5 October 2012

## Procedural Order No. 2

in the arbitration

Mediterraneo Exquisite Supply, Co., Claimant

v.

Equatoriana Clothing Manufacturing, Ltd., Respondent

### **1. How closely connected are Oceania Plus and its various subsidiaries? Is the parent company very actively involved in the operations, management and finances of its subsidiaries?**

In their day to day operations the various subsidiaries of Oceania Plus are completely independent from one another and from the mother company. That applies also to their dealings with each other. While companies such as Claimant have primarily a supportive function for other companies belonging to the group, such as Doma Cirun, the contracts concluded between them are largely negotiated at arms' length. The same applies also for intra-group disputes including those with the mother company.

There is, however, some overlap in the supervisory boards. In each board there is at least one manager from the board of directors of the mother company. That is inter alia to ensure that the general principles concerning the ethical conduct of the company are observed by all companies "belonging" to the Oceania Plus group or in which Oceania Plus has a major shareholding.

### **2. What are Oceania Plus and Claimant's policies regarding necessary audits for contracting partners?**

In the ordinary course of business a new audit for a listing as potential supplier is conducted every 4 years. Only companies on these lists are approached to submit offers. The audits are normally carried out by the companies responsible for the supply side of the Oceania Plus group, such as Claimant. If an audit has been performed by one company it is normally also considered to be sufficient by other companies of the Oceania Plus group. That is disclosed to the companies audited which are also made aware that the policies apply throughout the group.

Additional audits for particular contracts are only conducted in special circumstances, if for example there are doubts whether a supplier still complies with the policies. In the case of Respondent, Claimant would most likely have conducted an additional audit if it had not been for the rush order.

### **3. How did Respondent allay the auditors' suspicions of child labour in their audit for the April 2008 contract?**

It was established in the audit that one of Respondent's suppliers used child labour in at least one of its plants producing for Respondent. The manager of the plant had, however, been fired around the date of the audit. According to the newspapers such firing had been due to allegations of corruption but according to Respondent the primary reason for the firing had been an intervention by Respondent when it discovered that the plant used child labour. There had been sufficient documentary evidence for the auditors to at least support Respondent's allegations in this respect.

**4. What is the “policy of Oceania Plus Enterprises” that is referenced in clause 12 of the contract (Claimant’s Exhibit No 1) and was it attached to the contract as an addendum?**  
Art. 12 is a standard clause included by Claimant in all its contracts with suppliers, including previous contracts with Respondent. The policy mentioned is a one page document which contains certain broad ethical and environmental standards to be complied with in the production of the goods by the counterparty and its suppliers.

The policy was not attached to the contract and rarely is. It is normally handed out during the audit process required for a listing as a possible supplier. That also happened during the last audit performed upon Respondent and in the negotiations following the audit it was extensively discussed between the parties.

**5. Did Equatoriana Clothing comply with the policy established by Oceania Plus for it and its subsidiaries in previous contracts?**

It can be assumed that at least for the goods delivered to Claimant or other members of the Oceania Plus group Respondent complied with the policy. It is, however, not completely clear whether that also applies to Respondent’s dealing with other companies. The 2007/2008 audit raised concerns in this regard, which were largely dispelled in the ensuing discussions. Irrespective of this, Respondent was for this and other reasons not Claimant’s supplier of first choice if Claimant could choose between largely comparable offers from several suppliers. That is the main reason why there have been no other contracts between Claimant and Respondent between April 2008 and the contract in question.

**6. At what price did the other two potential suppliers offer the polo shirts?**

The other offers were USD 50,000 and 57,000 more expensive on otherwise largely identical terms. During the negotiations Respondent made clear that the price barely covered the production costs but that it was meant to attract further contracts from Claimant. The price was even below the price offered by the original supplier, which had gone insolvent.

**7. What is the place of conclusion of the contract?**

The contract had been signed in Equatoriana during a visit of Claimant’s CEO. It was negotiated on the basis of the contract model used by Claimant.

**8. Did the parties clarify the “otherwise applicable national law” in the sense of Art. 20 of the parties’ contract?**

No.

**9. What does Annex 1 of the contract say about the required quality of the shirts? Were these quality requirements met?**

The annex described in detail the required physical quality of the goods, in particular the material to be used, the sizes and the colours. There is no suggestion that the goods failed to conform to these descriptions.

**10. Which is the relevant Arbitration Agreement?**

The version contained in Claimant’s Exhibit No. 1 is the correct version of the arbitration agreement. In its Statement of Claim Claimant had copied in an earlier version of the agreement. Both parties agree on that and have explicitly confirmed the jurisdiction of the arbitral proceedings in the telephone conference.

**11. Does the contract contain a “no oral modification clause? Is there any established practice in the industry concerning oral modifications?**

The contract does not contain such a clause which requires the written form for all amendments. Equally there is no established usage in practice whether such clauses should be included into the contract or not and whether modifications can be made orally.

**12. What were the reasons for the supplier's failure to deliver the required goods in time to Respondent?**

The supplier had been affected by a strike which reduced its production capacity by 50 %. It only informed Respondent about that on the evening of February 8, 2011, after a decision had been taken by the management on how to allocate the remaining capacity to the existing contracts.

**13. Did Equatoriana Clothing take any actions in order to overcome the consequences of its provider's impediment to deliver the materials on time for the production of the "Yes Casual" shirts?**

After having received that information Respondent immediately investigated with other suppliers. Their offers would have been twice as expensive as the offer by the original supplier. Furthermore, while all of them considered it likely that delivery would occur in time no-one was willing to guarantee the necessary delivery date.

**14. On February 24, 2011 could the goods have been transported by air to meet the deadline?**

Claimant had enquired with several airlines it normally used but none of them had sufficient cargo space available during that period of time. As the manufacturing and packing of the goods took until February 23, 2011 it was impossible to meet the deadline by any other means of transportation

**15. Has Respondent previously delivered goods to Oceania, whether or not within the contractual relations with the Claimant? Had there been previous dealings with Claimant?**

Respondent did not "deliver" the goods to Oceania, since this was an FAS contract. However, it was understood that the goods were destined for Oceania for sale there.

There had been three contracts with third parties in which the goods were destined for Oceania, but none under a contract with Claimant.

Respondent has on several occasions supplied clothing to Claimant. In most of the cases the goods were, however, bought for subsidiaries of Atlantic Megastores. None of these contracts concerned shipments to Oceania. Furthermore, Claimant has never contracted with Respondent for deliveries to Doma Cirun but only for other subsidiaries of Oceania Plus located outside of Oceania. In all of these latter contracts Art. 12 was included.

**16. Is 'Yes Casual' a globally renowned brand? Would a reasonable person in Equatoriana be aware of its existence and that it is sold in Oceania?**

"Yes Casual" is a very well known brand in Oceania where Doma Cirun has most of its markets. Outside of Oceania it is not so well known, though there are at least two Doma Cirun markets in Equatoriana. The opening of the second market led to a longer article in the main newspaper of Equatoriana. The article, the main focus of which was the innovative selection process for hiring future employees, also mentioned Yes Casual as Doma Cirun's house brand.

The brand is well known to manufacturers of clothing in Equatoriana.

Respondent knew that the goods were to be delivered finally to Doma Cirun but did not positively know in which of its stores they were to be sold.

**17. Was the public in Oceania under the impression that the Yes Casual polo shirts had been manufactured by Equatoriana Clothing? Was it under the impression the rest of the Yes Casual products Doma Cirun carries were manufactured by Equatoriana Clothing?**

In general, the public in Oceania did not know the name of the manufacturer of any of the brands of clothing sold in Oceania. However, the television broadcast did mention Equatoriana Clothing as a manufacturer of items sold under the “Yes Casual” brand, though it did not mention polo shirts.

Neither the television broadcast nor the article in the Oceania Times had alleged that the polo shirts in question had been produced with child labor. Neither did they specifically allege that other products of the “Yes Casual” brand had been produced with child labor but directly only condemned the fact that Doma Cirun was using a supplier engaging in such production method. Irrespective of this lack of direct evidence, “Yes Casual” as the house brand of Doma Cirun suffered worst from the bad publicity created by the coverage. In the main sequence shown in the television broadcast the children were producing trousers.

**18. What is the price point (i.e. customer base) that Doma Cirun targets?**

Doma Cirun and its brand “Yes Casual” are targeting the upper level of the middle market segment.

**19. Can it be assumed that the entire decline in sales year-over-year for the polo shirts is attributable to the child labor investigation and not other factors (e.g., weather, change in fashion, etc.)?**

While it cannot be determined with certainty whether the child labor issue was the only reason for the drop in sales it was definitively the main raison for it, as the sales basically stopped after the reports.

**20. Would it be possible for Exquisite or its parent and/or sister companies to sell the polo shirt products in other markets outside Oceania, in a market less sensitive to issues of child labor?**

Oceania Plus has recently bought a competitor which had in its portfolio inter alia a chain of discount supermarkets selling textiles in Pacifica, where also Pacifica Trading has its main operations. Pacifica has not ratified the ILO Convention and child labor is not a major issue in that market, where customers are more price sensitive. The idea of selling the polo shirts via these supermarkets had been discussed at the managerial level but had been rejected in light of Oceania Plus’ general attitude towards child labor and potential repercussions on the reputation to the Yes Casual brand.

**21. Did Claimant inform Respondent of its intention to sell the polo shirts to Pacifica Trading Co. at any point between 8 April 2011 and 20 April 2011?**

Directly after receiving Respondent’s letter of April 10 (Claimant’s Exhibit No. 7) Claimant started looking for different buyers and informed Respondent about its intention to sell the goods for Respondent’s account. In light of Respondent’s categorical refusal to take back the goods Claimant did not inform Respondent when it finally had found Pacifica Trading.

**22. Was Gold Service Clothing one of the three manufacturers contacted by Exquisite in the first instance? Have they been audited?**

Yes. The last audit had taken place in 2007 but since then Gold Service Clothing had changed ownership, which in ordinary circumstance might have made an additional audit necessary. Despite the negative publicity resulting from the contract with Respondent, Claimant ran the risk of trusting the assurances of Gold Service Clothing instead of making an audit given the time constraints.

**23. Were the costs of delivering the polos by air and by ship from Gold Service Clothing to Oceania included in the USD 612,000 price of the contract between Exquisite and Gold Service Clothing?**

Yes.

**24. Have the parties agreed on the application of the IBA Rules of Evidence?**

There is no explicit reference to the IBA Rules of Evidence in the correspondence between the parties nor has the Arbitral Tribunal ordered their application. At the telephone conference the presiding arbitrator merely stated that the tribunal intended to conduct the proceedings in line with the international practice and in Procedural Order No. 1 stated that “In [the] arguments [of the parties] reference may be made to the IBA Rules of Evidence though their relevance remains controversial between the Parties.” In Danubia witness statements are not used at all in court proceedings at all but they have occasionally been used in arbitral proceedings.

**25. Is there any statutory provision concerning the use of witness statements in the laws of the concerned countries?**

No, there is not.

**26. What is the relationship between Mr. Short's new employer and the parties in dispute? Does Mr. Short's new employer has any direct or indirect interest in the outcome of the case?**

Since the termination of his 10 years long employment with Respondent in January 2012 Mr. Short has been working for Jumpers Production, a competitor of Equatoriana Clothing that is also based in Equatoriana. Jumpers has tried for years to be listed as a potential supplier by Oceana Plus or its subsidiaries and has recently succeeded to be listed by Claimant. It is not clear whether that is the main reason why the management of Jumpers is urging Mr. Short not to appear at the hearing or whether it has to do with the company's general policy to avoid any involvement in third party actions. In addition Mr. Short who is now the head of the purchase department at Jumpers has a very tight timetable and might not be available at the time of the hearing.

**27. Does the issuance of Order 4, which refers to a purported quotation of Mr. Long wherein he states that he would “make sure that all of the paper work reflected the new delivery date” imply that both claimant and respondent have conceded, or that the arbitrators have conclusively found, that a statement of this precise wording was indeed made by Mr. Long?**

While the exact wording of the entire conversation is not remembered with certainty by the two witnesses they are both sure that a wording along this line had been used by Mr. Long. It is undisputed between them that Mr. Long never made a specific reference to the contract.

**28. Is there a chance of summoning a witness by order of a court in Danubia or Equatoriana?**

The courts in Danubia would have no jurisdiction to order a witness located in another country to appear at a hearing of an arbitral tribunal. Equatoriana provides for court ordered production of documents for use in an arbitral proceeding but does not provide for the mandatory appearance of a witness to testify in an arbitral proceeding either in person or by video link.

**28. Does Equatoriana Clothing have assets only in Equatoriana or in other New York Convention signatory countries as well?**

All tangible assets of Equatoriana Clothing are in Equatoriana..

**29. Were the “settlements” with Doma Cirun and Oceania Plus fair in the given circumstances?**

Yes. There is no collusion involved but all negotiations were conducted at arms length and the settlement with Doma Cirun is objectively very favourable for Mediterraneo Exquisite Supply. According to the legal situation confirmed by independent advice payment to Oceania Plus could also not be avoided.

**30. Was the shipping contract concluded between Claimant and a third party?**

The shipping contract was concluded with TransOcean an independent shipping companies with no ties to any of the parties.

**31. Can we assume that 1,000 of the 100,000 Yes Casual polo T-shirts were sold in Doma Cirun stores between 20 March 2011 and 5 April 2011?**

Yes.

**32. Is the Arbitral Tribunal properly constituted?**

Yes. Both parties confirmed in the telephone conference that they had no objections to the constitution and the composition of the arbitral tribunal.

**33. How is the law applicable to a contract determined in court proceedings in Danubia, Oceania, Equatoriana and Mediterraneo?**

The conflict of laws rules applicable in those countries all allow for party autonomy. In the absence of an agreement the law applies with which the contract in question has the closest connection. In determining the closest connection different factors play a role, including the place of conclusion of the contract and the place where the party making the characteristic performance has its place of business.

None of these countries is subject to the Rome I Regulation 593/2008.

**34. What are the requirements imposed by the national contract law in Danubia, Oceania, Mediterraneo and Equatoriana for the form of an international contract?**

Mediterraneo submits all international sales contracts as well as their amendments to a writing requirement. In the three other states all contracts may be concluded orally and none of them has made an Article 96 declaration.

**35. When did Mediterraneo declare its reservation pursuant to article 96?**

The reservation was declared upon ratification of the CISG and duly deposited.



**36. What are the nature of legal systems in Mediterraneo, Oceania, Danubia and Equatoriana? Are they civil law countries or common law countries? Are they parties to the Vienna Convention on the Law of Treaties of 1969?**

Mediterraneo and Oceania are common law countries, while Danubia and Equatoriana are civil law countries. All of them are parties to the Vienna Convention on the Law of Treaties

(Signed)

Professor Presiding Arbitrator  
President of the arbitral tribunal

November 1, 2012