



Deakin International Commercial Arbitration Moot 2024

Moot Scenario

Notes:

1. This is a hypothetical scenario. All the persons and places are fictitious except limited use of real countries and locations, such as Australia (as the location of one of the Claimant's office; one of the destinations in the transaction; and arguably, the place of arbitration), the US (as the place of business of a potential third-party buyer of the Respondent), the Asia-Pacific Region (where the Claimant's business operates and most of the fish products in dispute were distributed and consumed). Other than those facts, no further facts should be presumed or inferred from the real world except as specifically mentioned, eg., where the law of certain countries might be identical to the law in the real world, as stated in the Procedural Order No.1.
2. Please assume that the omitted exhibits, including the witness statements, are generally consistent with the facts disclosed in the Problem.
3. Please also assume all descriptions of facts are accurate and supported by evidence unless there are clear omissions and inconsistencies in the materials provided by different parties.

Alba Seafood Importing & Exporting Ltd. (Claimant)

v

Zephyr Fishing Corp. (Respondent)

Notice of Arbitration/Statement of Claim

Introduction

1. This Notice of Arbitration is submitted on behalf of Alba Seafood Importing & Exporting Ltd. in accordance with art 3 of the UNCITRAL Arbitration Rules of the United Nations Commission on International Trade Law (the '**UNCITRAL Arbitration Rules**') against the Respondent. It should also be seen as the Statement of Claim in accordance with art 20 of the UNCITRAL Arbitration Rules.

Part I: The Parties

2. Alba Seafood Importing & Exporting Ltd. (Claimant) is a company incorporated in Sylvania. It distributes seafood products in the Asia-Pacific region. Its main office is at Level 10, 31 Seaview Avenue, Port Solara, Sylvania. It also has two representative offices, one located at Melbourne, Australia, and another located at Port Falora, Avernia. It currently has 15 permanent employees (80-100% FTE) and 8 sessional employees (30%-50% FTE), including one full-time permanent employee and one sessional employee at Melbourne, Australia, and one full-time permanent employee at Port Falora, Avernia.
3. Zephyr Fishing Corp. (Respondent) is a company incorporated in Pacifica with its main office at 5th Floor, 514 Ocean Drive, Port Pacifica Industrial Zone, Pacifica. It conducts a business of fishing in deep seas. It currently charters 5 vessels. The vessels are registered in Atlantis, Eldoria, and Nereus (all hypothetical countries), and mainly fish in the high seas.

Part II: Statement of Facts

4. Representatives of the Claimant attended an international seafood show and met Ms Claire Thompson (Ms Thompson), the sales representative of the Respondent in September 2018. Ms Thompson showcased the Respondent's recently chartered deep-sea fishing vessels and expressed its interest in expanding its markets into the Asia-Pacific region. The Respondent particularly emphasised that the vessels had the capacity to process fish products on board immediately and deliver them effectively to port. The Claimant's procurement representative, Mr Dario Rossano (Mr Rossano), demonstrated the Claimant's capacity and experience in distributing high-quality

seafood products and invited Respondent to use the Claimant as their distributor in the Asia-Pacific Region.

5. After the seafood show, Mr Rossano sent an inquiry to Ms Thompson discussing a long-term cooperation agreement between their two companies. Eventually, both parties agreed on a fish purchase transaction to be conducted in 2019 as the beginning of their cooperation. This contract was formed in the format of a purchase order made by the Claimant on 23 April 2019 (Exhibit C1: Purchase Order). This contract was properly performed in 2019. The goods were delivered to Sydney, Australia in June 2019, and the price was duly paid in July 2019.
6. Both parties were satisfied with the first transaction and decided to further the cooperation. The second transaction was executed, with goods delivered to Port Falora, Avernia in October 2019 and the price paid in November 2019. The details of this transaction were finalised by telephone conversations with reference to the first transaction, with no written orders or further contracts made.
7. Meanwhile, the parties were in the process of negotiating and drafting a long-term purchase contract ('the Contract'). Following a few phone calls and exchanges of emails, the parties prepared the draft Contract, agreeing on the sale of fish caught in the high seas. The draft was prepared by the Respondent on the basis of its contract template and sent to Mr Rossano's email account by Mr Wilfred Hoffman (Mr Hoffman), a manager of the Respondent, on 16 November 2019. (Exhibit C2: Communication regarding the drafted Contract)
8. After receiving the draft Contract from the Respondent, the Claimant proposed some minor modifications regarding payment, especially that the payment would be made within 60 days, instead of 30 days; and modified the warranty clause regarding the quality of the goods. Mr Rossano communicated those changes to Ms Thompson and Mr Hoffman via phone calls, and, upon their approval, prepared the final Contract signed by both of Claimant's directors, Mr Claude Valois (also the CEO) and Ms Stasha Rossano, and sent them to Ms Thompson and Mr Hoffman on 10 December 2019.
9. The final Contract was signed by the Respondent and returned to the Claimant on 5 January 2020. In the email communication, Mr Hoffman apologised for the delay in finalising the Contract and that the signatures of their directors, Mr Kaley and Ms Yates, were made by fax while they were on holiday overseas. (Exhibit C3: Communications regarding the final Contract)
10. The content of the final Contract included:
 - That the fish were to be delivered to three different destinations every 4 months, namely: to Port Falora, Avernia, before the end of every February; to Sydney, Australia, before the end of every June; and to Port Galatia, Serinia Islands, before the end of every October;
 - That each delivery of fish should be between 80 – 150 tons depending on the recent catch in the deep-sea area;
 - A list of types of fish products that might be supplied;

- The price of the fish is USD 22 per kg;
- The goods shall meet high quality standards and warranties;
- That payments should be made by electronic transfer within 60 days of the delivery of each delivery of goods.

(Exhibit C3)

11. The subsequent deliveries were severely interrupted by the COVID-19 pandemic. The Claimant received an instalment at Port Falora, Avernia in March 2020 and was notified that it was reasonably possible that there would not be any delivery of goods for a significant period of time due to the interruptions caused by the pandemic and the quarantine measures. After internal discussion, the Claimant determined to accept the deferred performance upon further notice.
12. In June 2022, the Claimant received a phone call from Mr Hoffman that they were in the process of resuming deep-sea fishing and expected that a significant volume of delivery, approximately 100 tons, could be made in Oct 2022 at Port Galatia, Serinia Islands, in accordance with the original contract; and that subsequent deliveries were expected to be "back to normal".
13. The goods were properly delivered to Port Galatia, Serinia, before the end of Oct 2022. From that date the goods were properly delivered in accordance with the schedule of the original Contract. The Claimant has paid for all the instalments delivered since Oct 2022.
14. On 10 Jan 2023, Mr Hoffman called Mr Rossano to inform him that the price of the fish due to be delivered in February 2023 would increase. The Claimant discussed this matter internally and decided to turn this proposal down due to the increase in costs in distribution of goods and the management of its own business. Mr Rossano passed this decision on to Mr Hoffman on 23 Jan 2023 over the phone.
15. Since early 2023, the Claimant received complaints from some subsequent buyers of the fish that the quality of the goods was doubtful. Some reported that the goods were mislabelled or misdescribed as being certain types of fish when they were in fact other types which were not covered by the list in the Contract; some others reported that the consumers of the fish supplied by the Respondent suffered symptoms such as vomiting, abdominal cramps and diarrhoea, and in a few more extreme cases also reported headache, fainting, extreme itchiness, tingling and burning around the mouth, etc.
16. When the first couple of incidents were reported to the Claimant in March 2023, the Claimant managed to deal with them without notifying the Respondent, considering them as unrelated incidents.
17. More and more cases were reported to the Claimant during the period April to August 2023. As of 15 September 2023, 33 incidents had been reported in various countries, 12 in relation to goods delivered in Feb 2023 to Port Falora, and 21 in relation goods delivered in June 2023 to Sydney. Among all 33 incidents, 7 were about mis-labelled or

misdescribed goods, and 26 incidents were about negative effects suffered by people after the consumption of the fish products. Mr Rossano contacted Mr Hoffman on 20 September 2023, informing him of this serious matter, and seeking a solution (Exhibit C4: Incident Reports).

18. After a few rounds of telephone discussions, as well as the internal discussions within Claimant's company, Mr Hoffman and Mr Rossano agreed over the phone on 27 September 2023 to:
 - a USD 2/kg price cut in the next 3 transactions to compensate Claimant's losses;
 - the Respondent to provide additional guarantee regarding quality of goods in subsequent instalments; and
 - While the Claimant will make their best effort to manage complaints from end buyers and consumers, they may bring further claims against the Respondent should there be further significant quality issues.
19. Later that day, Mr Rossano sent an email to Mr Hoffman to confirm the content of the agreement, which was read but not replied to by Mr Hoffman (Exhibit C5: Email Communications and Mr Rossano's witness statement).
20. Between October and December 2023, there were more incidents reported regarding the quality issue of the fish delivered. Mr Rossano contacted Mr Hoffman again in October and November but did not hear from his working email account. Later the Claimant was informed that Mr Hoffman left the Respondent's company. The Claimant attempted alternative contact channels and eventually reached Ms Yates, a director in the Respondent's company, on 15 December 2023. (Exhibit C5)
21. Ms Yates confirmed that Mr Hoffman left the Respondent's Company. Ms Yates further informed the Claimant that their company was not aware of the communications between Mr Hoffman and Mr Rossano, and thus, they would not endorse the price cut nor the further guarantee. (Exhibit C5)
22. During the conversation, Ms Yates also denied that there had been quality issues with their goods supplied since resuming the delivery. (Exhibit C5)

Part III: Points at Issue and Legal Grounds

23. Clause 12 of the Long-term Cooperation Contract between the Parties states,

"12. Dispute Resolution

The parties will submit any Dispute the parties do not settle under the mediation procedures above to (1) courts at Pacifica or (2) international arbitration. The arbitration hearings shall be held in Melbourne, Australia, or such other location as the parties may mutually agree in writing and shall be before three arbitrators."

24. Based on the Clause mentioned above, the Claimant raises the claims below.

25. A long-term sale of goods contract was duly formed between the parties since the first purchase order made on 23 April 2019. The places of incorporation of both parties are Contracting States of the CISG. In addition, a significant portion of goods were distributed to Australia, which is also a Contracting State of the CISG. This contract has sufficient connection with Contracting States of the CISG. Thus, the CISG should apply.

26. In the contract, Clause 8 provides:

“The Seller guarantees that all fish sold and delivered to the Buyer shall be of the highest quality and suitable for human consumption. The fish shall meet all the applicable international standards.”

Further, Clause 20.1 of the contract states that the contract is subject to the Respondent’s warranties. On the Respondent’s website, its General Warranties (Exhibit C6, last accessed 10 January 2024) provide:

“Zephyr warrants to all end-user customers that all fish sold shall be suitable for human consumption and meet all the applicable international standards and any specific standards applicable at the customer’s country.”

27. As stated in para.11-15, there were significant quality defects in goods supplied by the Respondent in 2022 and 2023, which were inconsistent with the quality of goods supplied in the sample transactions in June 2019 and October 2019, as well as the first instalment in March 2020. This is not only a breach of Clause 8 and the Respondent’s own General Warranties, but also a breach of art 35 of the CISG.

28. The Claimant suffered from significant losses due to the quality issues and was deprived of the benefits they should be entitled to under this contract.

Part IV: Relief Sought

29. On the basis of the factual and legal background above, the Claimant requests the tribunal to render:
- a) avoidance of the contract;
 - b) any losses suffered due to the severe breach of the contractual obligations to supply compliant goods;
 - c) any interest, the costs of this arbitration, and any attorney’s costs incurred.

12 January 2024

List of Attachments:

Exhibit C1: Purchase Order

Exhibit C2: Communication from the Respondent

Exhibit C3: Communications and the Final Contract

Exhibit C4: Incident Reports (Omitted)

Exhibit C5: Email Communications and Mr Rossano’s Witness Statement (Omitted)

Exhibit C6: General Warranties

Attachments

Exhibit C1: Purchase Order

Purchase Order No.0172

Seller: Zephyr Fishing Corp.

Description of goods

Item	Description	Quantity	Price (USD)	Total
Fish products, frozen	Fish caught in high sea April - June 2019	4,000- 6,000kg	22	88,000-132,000 USD

Delivery

Date: between 1 and 30 June 2019
Delivery Location: Sydney, Australia
Delivery Term: CIF

Payment

Payment Method: Wire Transfer
Payment Due Date: 30 days from the date of delivery

Quality and Inspection

The Seller warrants that all Fish Products delivered under this Purchase Order shall be fresh and merchantable, conforming to the quality standards specified in Exhibit A. The Buyer shall have the right to inspect the Fish Products upon delivery at Port Solara. Any non-conforming Fish Products shall be reported within 7 days of delivery.

Additional Terms and Conditions

The Seller shall provide all necessary documentation, including but not limited to, certificates of origin, health certificates, and invoices. Should a Long-Term Fish Purchase and Distribution Contract be concluded between Alba Seafood Importing & Exporting Ltd. and Zephyr Fishing Corp., this Purchase Order is subject to terms and conditions outlined in the Long-Term Contract, where applicable.

Buyer

Alba Seafood Importing & Exporting Ltd.
By: *Dario Rossano*
Name: Dario Rossano
Title: Chief Procurement Officer
Date: 23 April 2019

Exhibit C2: Communication from the Respondent

From: Wilfred Hoffman <w.hoffman@zephyrfishing.pc>
To: Dario Rossano <d.rossano@albaseafood.sy>
Cc: Claire Thompson <c.thompson@zephyrfishing.pc>
Subject: Draft Contract Review and Approval – Alba Seafood/Zephyr Fishing
Time: 10:42, 16 November 2019

Dear Mr Rossano

I hope this email finds you well.

As discussed, please find attached the draft of our Long-Term Fish Purchase and Distribution Contract based on our template, subject to the review and approval of your company. This contract reflects our ongoing commitment to providing high-quality fish products and outlines the terms and conditions for our mutual cooperation.

Please review the draft at your earliest convenience and let us know if there are any modifications or additional points you would like to discuss. Once you are satisfied with the terms, we can proceed with the formal signing process.

Thank you for your attention to this matter. We look forward to continuing our successful partnership.

Best regards,

Mr Wilfred Hoffman
Manager
Zephyr Fishing Corp.
5th Floor, 514 Ocean Drive, Port Pacifica Industrial Zone, Pacifica
Tel: +442 20 7023 4867

Attachment: Draft_Long-Term_Fish_Purchase_Contract.docx

Exhibit C3: Communications and the Final Contract

From: Sales Zephyr Fishing <sales@zephyrfishing.pc>
To: Dario Rossano <d.rossano@albaseafood.sy>
Cc: : Claire Thompson <c.thompson@zephyrfishing.pc>; Sebastian Kaley <s.kaley@zephyrfishing.pc>; Thalia Yates <t.yates@zephyrfishing.pc>
Subject: Re: Final Contract– Alba Seafood/Zephyr Fishing
Time: 17:05, 5 January 2020

Dear Mr Rossano

I am pleased to inform you that our long-term contract is now finalised, with all the modifications discussed over the phone calls adopted by our company. Please find attached a signed copy of the final version of the document. I apologise for the delay in processing this finalised copy, as both of our directors, Mr Kaley and Ms Yates, were overseas during the holiday season; however, this would not affect the delivery of the February instalment. We are confident that this cooperation extends our mutual trust and pursuit of excellence in the past dealings and will be mutually beneficial in the long run.

We look forward to a successful collaboration and achieving our shared goals.

Best regards,

Mr Wilfred Hoffman
Manager
Zephyr Fishing Corp.
5th Floor, 514 Ocean Drive, Port Pacifica Industrial Zone, Pacifica
Tel: +442 20 7023 4867

Attachment: Draft_Long-Term_Fish_Purchase_Contract.docx

Long-term Fish Supply and Distribution Contract

This Long-Term Fish Purchase and Distribution Contract (the "Contract") is made and entered into by and between:

Alba Seafood Importing & Exporting Ltd. (Buyer)

and

Zephyr Fishing Corp. (Seller)

WHEREAS, the Buyer and Seller aim to establish a long-term supply relationship built on mutual trust and a commitment to providing high-quality fish products;

WHEREAS, the Buyer desires to purchase fish products from the Seller, and the Seller desires to sell fish products to the Buyer under the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto agree as follows:

1. Definitions

1.1 "Fish Products" means various species of fish agreed upon by the parties and listed in Exhibit A.

...

2. Purchase and Sale

2.1 The Seller agrees to sell, and the Buyer agrees to purchase, Fish Products as specified in Exhibit A., by instalments.

2.2 Each instalment of Fish Products shall be between 80-150 tons, depending on the Seller's recent catch in the high seas.

3. Delivery Schedule

3.1 Fish Products shall be delivered to the Delivery Ports according to the following schedule:

- CIF Port Falora, Avernia, before the end of every February;
- CIF Port Sydney, Australia, before the end of every June;
- CIF Port Galatia, Serinia Islands, before the end of every October.

3.2 Seller should inform the Buyer the details of each instalment, including the quantity of each instalment, and the expected delivery date, at least two weeks prior to the arrival of the goods at the destination.

4. Price and Payment

4.1 The price of the Fish Products shall be USD 22 per kg.

4.2 Payments shall be made by the Buyer within 60 days of the delivery of each instalment of Fish Products.

4.3 Payments shall be made via wire transfer to the account specified by the Seller.

...

8. Quality Guarantee

8.1 The Seller guarantees that all fish sold and delivered to the Buyer shall be of the highest quality and suitable for human consumption. The fish shall meet all the applicable international standards.

8.2 The Buyer shall have the right to inspect the Fish Products upon delivery at the Delivery Ports. Any non-conforming Fish Products shall be reported within 7 days of delivery.

...

9. Force Majeure

9.1 Neither party shall be liable for any failure or delay in performance under this Contract due to circumstances beyond its reasonable control, including but not limited to acts of God, war, or natural disasters.

...

12. Dispute Resolution

The parties will submit any dispute the parties do not settle via amicable mediation to (1) courts at Pacifica or (2) international arbitration. The arbitration hearings shall be held in Melbourne, Australia, or such other location as the parties may mutually agree in writing and shall be before three arbitrators.”

...

20. Miscellaneous

20.1 Acknowledging the Seller’s warranties to customers (www.zephyrfishing.com.pc/documents/generalwarranties.html), this Contract constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether written or oral, relating to its subject matter.

20.2 No amendment or modification of this Contract shall be valid unless in writing and signed.

20.3 Neither party may assign this Contract without the prior written consent of the other party.

20.4 Any notices required or permitted under this Contract shall be in writing and sent to the addresses specified above unless otherwise agreed to by both parties.

Signatures

Seller

Zephyr Fishing Corp.

Mr Sebastian Kaley, Director
Mr Sebastian Kaley

Date
20 Dec 2019

Ms Thalia Yates, Director
Ms Thalia Yates

Date
03 Jan 2020

and

Buyer

Alba Seafood Importing & Exporting Ltd.

Mr Claude Valois, CEO and Director
Mr Claude Valois

Date
8 December 2019

Ms Stasha Rossano, Director
Ms Stasha Rossano

Date
8 December 2019

Exhibit C6: General Warranties

**Zephyr Fishing Corp.
General Warranties**

...

3 Quality

3.1 Zephyr warrants to all end-user customers that all fish sold shall be suitable for human consumption and meet all the applicable international standards and any specific standards applicable at the customer's country.

...

3.8 In case of any discrepancy in a warranty-claim, a first-class international testing institute shall be enlisted to judge the claim finally. All fees and expenses shall be borne by the losing party, unless otherwise awarded.

...

Alba Seafood Importing & Exporting Ltd. (Claimant)

v

Zephyr Fishing Corp. (Respondent)

Response to the Notice of Arbitration/Statement of Defence and Counterclaim

Introduction

1. The Notice of Arbitration provides the tribunal a subjective and misleading picture of facts.
2. This tribunal does not have jurisdiction to hear this case.
3. In the case that the tribunal finds that it has jurisdiction to hear this case, it shall reject the claims. Further, it shall uphold the Respondent's counterclaims listed below.

Part I: Factual grounds

4. Ms Thompson, the sales representative of the Respondent, met Mr Rossano, manager of the Claimant, at the international seafood show in September 2018. Mr Rossano expressed the Claimant's interest in developing a long-term business relationship with the Respondent and initiated a discussion of a fish-purchase transaction in subsequent communications.
5. It was made clear in the communication between Ms Thompson and Mr Rossano in March 2019 that they agreed to buy fish from the Respondent in April 2019 as a one-off transaction. The Respondent properly performed its duties subject to this transaction in 2019. The Respondent extended its cooperation by properly executing the second transaction in October 2019 upon the request of the Claimant. (Exhibit R1: Witness Statement of Ms Thompson)
6. It was only after the success of the first two transactions, that the Parties started to negotiate the long-term contract on fish purchase. While the drafted contract was prepared by the Respondent, the final version of the contract was prepared by the Claimant. Crucially, while the Respondent acknowledges that some of the changes, such as the extension of the payment period from 30 days to 60 days, were communicated to the Respondent during phone calls, some other changes, such as the place of arbitration hearings, were inserted into the final copy of the contract without being communicated. (Exhibit R1: Witness Statement of Ms Thompson)
7. Further, while Ms Thompson and Mr Hoffman were substantially involved in the negotiation of this contract, the Claimant was, or should have been, aware that the

final decision-makers of the Respondent were Mr Kaley and Ms Yates. This is evidenced by the email sending through the final drafted contract, expressly mentioning both Mr Kaley and Ms Yates (Exhibit R2: Email Communication).

8. Unfortunately, the performance of this contract since 2020 was severely disrupted by the COVID-19 pandemic. The vessels, the fishing industry, and even the related ports, were severely understaffed, and it was difficult to locate the ships or to know whether the planned catch of fish was properly implemented for a long period of time.
9. Due to the disruptions, the first instalment of goods subject to the Contract was slightly deferred to March 2020, and it was uncertain whether the contract could be performed in the subsequent months or even years. The Respondent promised that it would manage the situation with their best efforts and keep the Claimant updated once deep-sea fishing could be resumed.
10. The Respondent made its best effort to resume its fishing practice and to prepare the supply for its clients, including the Claimant, as early as possible. Ms Thompson informed the Claimant in June 2022 that there should be sufficient goods to be delivered to Port Galatia, Serinia Islands, before Oct 2022. Since then, the goods were properly delivered in accordance with the schedule of the original contract.
11. However, following the pandemic and the rise of global inflation, the costs of running the fishing business significantly increased. Thus, the Respondent raised a request for the renegotiation of the price of the fish on 10 Jan 2023, regarding the delivery of goods in February 2023. To our surprise, this proposal was eventually rejected by Mr Rossano on 23 Jan 2023 over the phone with Mr Hoffman.
12. The Respondent did not pay attention to and was not aware of the details of the subsequent re-sale of the goods. Nor did the Respondent receive any formal complaint about the quality of the goods from the Claimant until on 15 December 2023 when Mr Yates received an email from Mr Rossano that there had been a significant volume of complaints against goods supplied by the Respondent, and that the Claimant had started an investigation of the incidents. On that basis, the Claimant would consider raising a formal claim against us.
13. Ms Yates called the Claimant immediately. During this communication, the Respondent was surprised by the alleged negotiation and agreement between Mr Rossano and Mr Hoffman on this matter in September 2023 regarding the price deduction. The management of the Respondent was never informed of the existence of this communication. It was clear from the process of the conclusion of the original contract that Mr Hoffman did not have the authority to agree with such major issues.
14. The Respondent was notified by Mr Hoffman that he wished to voluntarily resign from his current position in the Respondent's company on 15 October 2023 for reasons not related to this dispute. His resignation took effect on 13 November 2023. (Exhibit R3: Mr Hoffman's notice of resignation)

15. Contrary to the Claimant's allegation, our investigation of those incidents showed that all goods in dispute were transferred and handled by one carrier retained by the Claimant, Oceanic Star Shipping Ltd., a business incorporated in Eldoria, and that the media in Eldoria had reported some incidents of the improper handling of goods by Oceanic Star in 2022 and 2023. (Exhibit R4: reports; Exhibit R5: news release) For that reason, the Respondent submits that, contrary to the Claimant's allegation, the Claimant and the carrier Oceanic Star caused the quality issue and should bear the losses.
16. As the Claimant clearly expressed its intention to discontinue the performance of the contract in the Notice of Arbitration in 12 Jan 2024, the Respondent had to resell the goods prepared for the February 2024 delivery at the price of USD19/kg on short notice.

Part II: Response to the issues and legal arguments

17. The tribunal has no jurisdiction to hear this matter.
18. First of all, the arbitration agreement is not agreed to by the parties and is not clear enough to be executed. Whilst the arbitration clause was based on a template supplied by the Respondent, the second sentence "The arbitration hearings shall be held in Melbourne, Australia, or such other location as the parties may mutually agree in writing and shall be before three arbitrators" was inserted by the Claimant. The Claimant removed the choice of ICC arbitration in the original template and added an ambiguous choice of the place of hearing, making the arbitration clause ambiguous and unenforceable. Further, the Respondent was not properly notified regarding such changes and should not be bound by it.
19. Second, as the Claimant relied upon the General Warranties on the Respondent's website and its applicability to this transaction, it was made clear in art 3.8 of the General Warranties that all quality-related disputes should be determined by a first-class international testing institute finally. Any arbitral tribunal should refrain from hearing quality-related disputes in relation to the issues covered by the General Warranties.
20. In the case that the tribunal has jurisdiction, the CISG does not sufficiently cover all issues in dispute. The Respondent proposes that the tribunal should find the domestic law of the Respondent applies in addition to the CISG.
21. The first two transactions between the parties were not covered by the Contract. Nor should the goods supplied by the Respondent be seen as samples of the transactions covered by the Contract.
22. It was clear from previous communications and transactions that Mr Hoffman had no authority to negotiate with the Claimant regarding the alleged quality issues and agree with the price reduction. The Respondent should not be bound by any deal alleged to

be agreed to by Mr Hoffman. Further, the modifications failed to meet the requirement that any modifications need to be in writing.

23. The Respondent did not supply non-compliant goods, as all goods met the description of goods in the Contract, passed the tests and inspections at the destination ports, and were merchantable on the international market.
24. The Claimant failed to prove that the alleged quality issue was caused by the Respondent. The number of incidents is relatively small in the context of the large volume of goods delivered; thus, the causation link between the incidents and the goods delivered by the Respondent could not be established. It would be more persuasive that the alleged quality issues in the reported incidents only arose from the subsequent distribution process. The Respondent should not be held liable.
25. The Claimant's refusal to pay the full amount for the 2023 October instalment and its proposed termination of the Contract has no factual and legal basis.

Part III: Response to the relief sought

26. The Respondent requests the tribunal:
 - to decline their jurisdiction to hear this case;
 - in case the tribunal decides that it has the jurisdiction to hear the case, to reject all claims brought by the Claimant and to order the Claimant to bear the costs incurred in the arbitration proceeding;
 - to demand the Claimant pay the remaining amount due regarding the October 2023 instalment;
 - to compensate the Respondent's losses due to the Claimant's discontinuation of the performance of Contract, including the losses suffered from reselling goods prepared for the February 2024 instalment.

12 February 2024

List of Attachments:

Exhibit R1: Witness Statement of Ms Thompson (Omitted)

Exhibit R2: Email communication regarding the final draft

Exhibit R3: Mr Hoffman's letter of resignation (Omitted)

Exhibit R4: Investigation report (Omitted)

Exhibit R5: news release (Omitted)

Exhibit R2: Email communication regarding the final draft

From: Dario Rossano <d.rossano@albaseafood.sy>
To: Claire Thompson <c.thompson@zephyrfishing.pc>; Wilfred Hoffman
<w.hoffman@zephyrfishing.pc>
Subject: Re: Final Contract– Alba Seafood/Zephyr Fishing
Time: 12:19, 10 December 2019

Dear Ms Thompson and Mr Hoffman

I trust this message finds you well.

I am writing to inform you that our legal team have reviewed and finalised the editing of the long-term purchase contract sent through on 16 November. The editing work mainly reflected the modifications discussed between Claire, you and me over the phone on 25 November and 3 December. These changes are intended to better align with our mutual objectives and ensure clarity on all terms. In particular, the payment requirement of 30 days is changed to 60 days, which had been agreed upon on 3 December.

Both of our directors had approved this contract with the mutually agreed modifications and signed it. Please find attached the signed copy of the contract for confirmation by Mr Kaley and Ms Yates.

I look forward to hearing from you soon regarding the finalisation of this contract.

Kind regards,
Mr Dario Rossano

Manager - Procurement
Alba Seafood Importing & Exporting

Procedural Order No.1
of 16 April 2024

in the Arbitral Proceedings

between
Alba Seafood Importing & Exporting Ltd. (Claimant)
and
Zephyr Fishing Corp. (Respondent)

1. The three-member tribunal was duly established on 25 March 2024 in accordance with the UNCITRAL Rules 2021.
2. A virtual conference was held on 15 April 2024 with the presence of all tribunal members and both parties. In the conference the tribunal took note of the following facts.
 - a. Both Sylvania and Pacifica are Contracting States of the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)* and the *United Nations Convention on Contracts for the International Sale of Goods (CISG)*. Pacifica made an art 96 reservation regarding the written format of the international sale of goods contract.
 - b. The general provisions of the domestic contract law of Sylvania is a verbatim adoption of the *UNIDROIT Principles of International Commercial Contracts (2016)(PICC)*. Its contract law also contains specific provisions governing sale of goods contracts, which is a verbatim adoption of the *German Civil Code (Bürgerliches Gesetzbuch, BGB)* Book 2, Division 8, Title 1, Subtitle 1 (Sections 433 – 453).
 - c. The domestic contract law of Pacifica is identical to the Australian common law; it also has a separate sale of goods legislation, which is a verbatim adoption of the *Goods Act 1958 (Vic)*, except that it requires the written format of cross-border sale of goods transactions between businesses exceeding the amount of USD5,000, which is in line with the art 96 reservation to the *CISG* made by Pacifica.
3. Based on the discussion during the conference, the tribunal intended to schedule the virtual hearing for 3, 4, 9 and 10 September 2024, seen as taking place at Melbourne, Australia, and to limit the scope of the hearing to two major issues:
 - a. whether the tribunal has the jurisdiction to hear this matter; and
 - b. preliminary issues in relation to the quality and/or conformity claim.

In order to further clarify the scope of these two major issues, the tribunal ordered the parties to submit and exchange further evidence by 20 May 2024.

16 April 2024
The Presiding Arbitrator

14 June 2024

Alba Seafood Importing & Exporting Ltd. v. Zephyr Fishing Corp.

Request to amend the Statement of Claim

Dear Presiding Arbitrator and Members of the Tribunal,

1. With the current claim, the Claimant wishes to amend its Statement of Claim with additional factual grounds supporting its claim on the quality matters, and to add one additional claim against the Respondent: that the tribunal should grant the Claimant remedies for the Respondent's failure to perform the three instalments between Oct 2021 and June 2022 since the Respondent's capacity to fish had resumed.

Factual Background

2. The Claimant obtained from a private and confidential source the internal communications of the Respondent's company. Contrary to the Respondent's allegation that they had no capacity to perform the contract from March 2020 to October 2022, two of their chartered vessels had resumed deep sea fishing activities in September 2021. They also chartered three more vessels between March and June 2022. (Exhibit C7: Email communications)
3. A series of email communications since November 2021 disclosed that the Respondent intended to store the fish caught in late 2021 and early 2022 for a potential long-term cooperation with another client in the United States rather than to supply them to the Claimant. However, the negotiation of this new deal eventually failed in August 2022. (Exhibit C7: Email communications)
4. Further, contrary to the Respondent's allegation following the tribunal's order to disclose evidence that they did not obtain any evidence in relation to their knowledge of the quality and conformity issues prior to the discussion on 15 December 2023, the senior management of the Respondent company had the knowledge of, and might have been involved in directing, the delivery of non-fresh fish products to the Claimant. There had been communications within the Respondent company regarding the goods delivered to the Claimant between August 2022 and February 2023, indicating that the goods delivered were not recently caught, but those stored for the purpose of the previously mentioned potential deal. At least one email mentioned that a significant portion of the goods planned to be delivered to the Claimant had been frozen for approximately 12 months. This is unacceptable under the Contract between the Claimant and the Respondent; moreover, goods of this condition would not be merchantable. (Exhibit C7: Email communications)

Legal Analysis

5. Art 22 of the UNCITRAL Arbitration Rules allows the Claimant to amend its claim, provided that such amendment is within the scope of the jurisdiction of the tribunal,

“unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances.”

6. The substance of the new evidence, as indicated above, has significant probative value and supports both the existing claim regarding the quality of goods and the new claim regarding non-performance. In particular, it proves that the Claimant had the capacity to perform the current contract for the three instalments in October 2021, February 2022 and June 2022; and that its failure to do so was intentionally chosen by the Respondent’s senior management, rather than an impediment caused by the global pandemic. Further, the new evidence proved that the Respondent delivered goods that is not merchantable and did not meet the purpose of the contract in October 2022 and February 2023.
7. The tribunal should accept the new evidence. The Respondent intentionally hid the above evidence from the Claimant and the tribunal, which had already committed fraud. Should the tribunal decide the case without taking into account the new evidence, the arbitral award resulting from this proceeding would be unenforceable.
8. The new claim still arises from the performance of the Contract and falls within the scope of the jurisdiction of this tribunal.
9. Further, given that all evidence was within the knowledge of the Respondent, and that there are still more than two months before the commencement of the formal hearing, there is no need to reschedule the hearing, and the Respondent’s rights would not be jeopardised.

Claimant’s Counsel

Attachment:

Exhibit C7: Email Communications (Omitted)

Alba Seafood Importing & Exporting Ltd. v. Zephyr Fishing Corp.

Re: Request to amend the Statement of Claim

Dear Members of the Tribunal

1. The Claimant's new evidence was illegally obtained and irrelevant and therefore should be rejected. The proposed amendment of factual grounds and claims should also be rejected.
2. At 3am, 2 Jan 2024, our main office at 5th Floor, 514 Ocean Drive, Port Pacifica Industrial Zone, Pacifica was broken into. Many documents and electronic devices were stolen. As it was during the holiday season, this incident was not reported to the police until later on 4 Jan 2024. As the burglars disabled and destroyed the alarm and CCTV surveillance system, little evidence was collected. The case is still under investigation. The police have also confirmed that the privacy of the internal data of the company might be negatively affected due to this incident. The scope of the internal data leakage covers the content of the evidence submitted by the Claimant. (Exhibit R6: Police Reports)
3. Further, it was brought to our attention that, Mr Hoffman, who had voluntarily left the company in Oct 2023, established his own business in January 2024, Hoffman's Sea Products Distributing Ltd. (Hoffman's), incorporated in Lirania (which is geographically close to Pacifica), the scope of the businesses is such that it significantly overlaps with ours. (Exhibit R7: Registration information of Mr Hoffman's company) In February 2024, Mr Hoffman's company obtained ownership of one of the vessels the Respondent had chartered for more than five years, which terminated its contract with the Respondent. In March 2024, the owner of another vessel chartered by the Respondent terminated the contract with the Respondent and started cooperation with Mr Hoffman's company. While there has been no direct evidence to date, the Respondent believes that Mr Hoffman was involved in, or benefitted from, the burglary in Jan 2024 and the subsequent information leakage. The local police accepted the Respondent's belief and is investigating Mr Hoffman's potential engagement in the burglary. (Exhibit R6: Police Reports)
4. The Respondent also notes that both Mr Rossano and Mr Hoffman attended the same industrial function at Port Falora, Avernia, on 18 November 2023, which was shortly after Mr Hoffman's resignation (Exhibit R8: photos of the event), and that the Alba Pacific Marine Foods Supply Co. Ltd, which was also incorporated in Lirania, holds 20% shares of Mr Hoffman's company since its incorporation. (Exhibit R7: Registration information of Mr Hoffman's Company) Alba Pacific Marine Foods Supply Co. Ltd. and Alba Seafood Importing & Exporting Co. Ltd. are both subsidiaries of the Alba Global Group Company.
5. While the Claimant refused to disclose the source of the evidence, given the proximity between Mr Hoffman and the Claimant in previous and current dealings, as well as that both Mr Hoffman and the Claimant were benefitting from the burglary and the

information leakage, the Respondent submits that evidence submitted by the Claimant on 14 June 2024 was obtained by, and resulted from, the burglary, which is clearly illegal; and the Claimant might have been involved in the wrongdoing in relation to the burglary and information leakage, and therefore should be prevented from benefiting from the potential wrongdoing. According to the fundamental principle of procedural fairness and equity, illegally obtained evidence should be rejected, and parties without clean hands should not benefit from wrong doings.

6. In addition, the new evidence should be rejected on the basis that it deals with unrelated transactions and internal matters of the Respondent and lacks sufficient connection with the current dispute. The Claimant is not the only buyer of fish products from the Respondent; the Respondent also supplies fish products to two other regular buyers as well as other one-off or occasional buyers. In 2023, the fish supply to the Claimant represented 35% of the Respondent's total produce. (Exhibit R9: Respondent's Annual Report 2023) There is not enough causation link between the Respondent's general capacity to run the business and to deal with other potential customers and their capacity to perform the contract during September 2021 and October 2022.
7. Further, the disclosure of communications in relation to internal matters and the Respondent's other potential dealings would jeopardise the Respondent's business interests.
8. The shelf-life of frozen seafood products is usually between 18-24 months. Our products supplied to the Claimant consistently met that standard.
9. Thus, the new evidence, and the proposed amendments based on such evidence, should be rejected.

Counsel of the Respondent
20 June 2024
Attachment: Exhibits R6-R9 (omitted)

Procedural Order No.2
of 2 July 2024

in the Arbitration Proceedings

between
Alba Seafood Importing & Exporting Ltd. (Claimant)
and
Zephyr Fishing Corp. (Respondent)

1. Since the making of Procedural Order No.1 on 16 April 2024, the parties have had some exchanges in relation to narrowing down the quality and/or conformity claim.
2. On 14 June 2024, the Claimant submitted a request to amend its Statement of Claim, together with new evidence, indicating that they would add a new claim against the Respondent regarding the failure to deliver three instalments between Oct 2021 and June 2022 (“the non-performance claim”). The evidence was alleged to prove that the management of the Respondent was intentionally holding a significant volume of fish during 2021 for other potential dealings, and when those dealings failed, supplied the fish stored for an extended period of time to the Claimant in 2022 and 2023.
3. On 20 June 2024, the Respondent submitted that the new evidence adduced by the Claimant should not be admitted on various grounds. It also suggested that the amendment of the Statement of Claim should be rejected.
4. A further video conference was held among all parties and members of the tribunal on 28 June 2024. The tribunal discussed with the parties the new evidence and new claim, and in particular, whether the hearing was to be rescheduled. Based on the mutual understanding reached at this video conference, the arbitral tribunal decided that the hearing on 3, 4, 9 and 10 September 2024, as decided in Procedure Order No.1, should continue, and the scope of the hearing should be limited to the following questions:
 - A. Whether this tribunal has the jurisdiction to hear this dispute, including the quality and/or conformity claim and the non-performance claim;
 - B. In case the tribunal has the jurisdiction to hear this dispute, whether the new evidence should be rejected, including what particular set of evidence rules should be applied in determining this matter;
 - C. Regarding the quality and/or conformity claim, parties should make submissions on the following preliminary issues:
 - whether the Respondent should be bound by the negotiations between the Claimant and Mr Hoffman in September 2023;

- what contractual and legal tests of quality and/or conformity should apply (including those contested in the original submissions and the new submissions);

The parties should submit, in particular, in dealing with the above issues, whether any other law should apply in addition to the CISG.

The submissions are to be made in accordance with the Rules of the Moot.

- 1) For the submissions, the following Procedural Timetable shall apply:
 - a. Claimant's Submission: no later than 11:59PM AEST, Tuesday 6 August 2024;
 - b. Respondents' Submission: no later than 11:59PM AEST, Wednesday 14 August 2024.
- (2) In the event that Parties need further information, a Request for Clarification must be made in accordance with 5(1) of the Rules of Moot no later than Tuesday, 16 July 2024 by emailing deakin-ica-moot@deakin.edu.au.
- (3) Both Parties are invited to attend the virtual hearing scheduled for 3, 4, 9 and 10 September 2024, seen as taking place at Melbourne, Australia. The details concerning the virtual hearing will be provided to Parties in due time.

2 July 2024

Procedural Order No.3

23 July 2024

Corrections

The correct version of the arbitration agreement should be the one in Exhibit C3. The one within paragraph 23 of the Notice of Arbitration should be consistent with Exhibit C3.

In Exhibit C1, 'Delivery at Port Solara' should read 'Delivery at Sydney'.

Paragraph 12 of the Response to the Notice of Arbitration should refer to Ms Yates, not Mr Yates.

Paragraph 6 of the Request to Amend the Statement of Claim should read "In particular, it proves the [Respondent] had the capacity to perform the current contract...".

Clarifications

Parties and their businesses

- 1. Is there a meaningful distinction between 'deep' seas and 'high' seas in the context of the Respondent's activity?**

The Respondent submitted that the fish products in dispute were caught from waters that do not fall within the territory or Exclusive Economic Zones of any State.

- 2. What is Mr. Rossano's occupation? Is he considered a 'Procurement Representative' per the Claimant or a 'Manager' per the Respondent?**

Mr Rossano's specific title is "Chief Procurement Officer" as shown in Exhibit C1, which is a position in its higher management. He took the role as the procurement representative of the Claimant when attending the international seafood show.

- 3. The Claimant submits that the Respondent said that the 'vessels had the capacity to process fish products on board immediately'. What processing procedures were taken on board the Respondent's vessels from 2019 to 2023? Do they relate to the freezing of fish?**

Respondent submitted that their vessels processed the fish in various ways, which included sorting and grading, bleeding and gutting, washing and cleaning, filleting and steaking, chilling and freezing, packaging, etc., depending on the type of fish caught and type of products demanded.

- 4. Is there any relationship between Mr. Rossano and Ms. Stasha Rossano?**

Mr Dario Rossano is Ms Stasha Rossano's nephew. The Rossano family (including Mr Rossano) jointly hold 40% shares of the Claimant's company. Mr Rossano personally holds 5% of the shares of the company.

- 5. Which continent are the following countries located within: Atlantis, Eldoria and Nereus?**

Atlantis is in the Carribean Sea. Eldoria is in Europe. Nereus is in Africa. All three countries are flag of conveniences countries.

- 6. What was the scope of Mr Hoffman's authority?**

The Respondent's submissions described Mr Hoffman as a manager between 2018 and 2023. Mr Rossano's witness statement indicated that he believed Mr Hoffman had the authority to negotiate and conclude contracts.

Previous Transactions

- 7. Regarding the parties' first transaction, what method of correspondence was utilized to facilitate the parties' negotiations and to finalize the terms of the first Purchase Order of 23 April 2019?**

There had been a few exchanges of emails and a few phone calls between the two parties, mainly between Ms Thompson and Mr Rossano. The Purchase Order was sent by Mr Rossano via email.

- 8. With respect to the Purchase Order dated October 2019, was there any written or electronic communication during the formation of this contract, or was it entirely agreed over the telephone?**

It is entirely over the telephone.

- 9. Was Mr. Kaley's and Ms. Yates' approval and signatory required for the first two Purchase Orders to proceed?**

No.

The conclusion and content of the current contract

- 10. Did the Claimant make any modifications to the long-term contract regarding fish quality and conformity, communicated to the Respondent in November 2019?**

No.

- 11. Does the term 'meanwhile' indicate that the parties were still negotiating from Oct 2019 to Nov 2019?**

Yes.

- 12. When Mr. Rosanno communicated the ‘minor modifications to the Draft Contract’ to Ms. Thompson and Mr. Hoffman via phone calls, did he purport to say that those modifications were exhaustive (i.e. that the only modifications were the ones that he mentioned, or simply that he was flagging a few of the important modifications)?**

This was not mentioned in Mr Rossano’s witness statement (Exhibit C5). Ms Thompson’s witness statement (Exhibit R1) stated that she believed Mr Rossano meant the modifications mentioned during the conversation were exhaustive.

- 13. Were the Respondent’s directors present for the negotiations leading to the signing of the long-term contract?**

No.

- 14. Between which individual representatives were communications made regarding amendments to the long-term contract?**

The communications were made via phone call between Mr Rossano representing the Claimant and Ms Thompson and Mr Hoffman representing the Respondent.

- 15. Were the emails sent from Mr. Hoffman throughout the negotiation period sent from a business email account, or his personal email account? Are there any other people who had access to this email account?**

Most of the email communications were from Mr Hoffman’s personal email account (w.hoffman@zephyrfishing.pc) as shown in Exhibit C2. Occasionally Mr Hoffman would use a shared account for Sales Zephyr Fishing (sales@zephyrfishing.pc) as shown in Exhibit C3. A few other members of the sales team, including Ms Thompson, also have access to the latter. While other members of the sales team do not have the access to Mr Hoffman’s personal account, the IT Department of their company could access, and grant access to anyone, with the permission of the company’s directors.

- 16. What does ‘made by fax’ mean? [Notice of Arbitration, para 9].**

By that time Mr Kaley and Ms Yates were on holiday in different countries. Mr Kaley faxed the signature page with his signature to Ms Yates. Ms Yates added her signature and faxed the page with all signatures to Mr Hoffman, who then consolidated the complete contract and sent it back to the Claimant via email.

- 17. Is there a confidentiality clause in the contract?**

No.

- 18. Was there a choice of law clause in the long-term contract?**

No.

Performance of the current contract

- 19. Is there any written communication by the Claimant to the Respondent containing the acceptance of deferment? [Notice of Arbitration, para 11].**

Yes, there were email communications confirming the acceptance of deferred performance. This was not disputed between the parties until June 2024.

- 20. How did the COVID-19 pandemic affect Zephyr Fishing Corp.'s operations? Were there any government-imposed restrictions or measures that directly impacted the fishing and delivery schedules? What specific arrangements were made regarding the deferred performance agreed upon in March 2020?**

Respondent submitted that there were various restrictions and quarantine measures imposed by local governments in many different States affecting the operation of its fishing and delivery. This included, but not limited to, staff and contractors suffering from COVID-19 or quarantine measures; vessels understaffed and quarantined; etc. There were no further specific arrangements other than what had been provided in the submissions as it was not clear when the restrictions and quarantine measures would be removed.

- 21. Who informed the Claimant that deep sea fishing had resumed in June 2022 – Mr. Hoffman or Ms. Thompson? Alternatively, was the Claimant informed by both Mr. Hoffman and Ms. Thompson that deep sea fishing had resumed in June 2022? If so, who informed the Claimant first? [Notice of Arbitration, para 12].**

The initial phone call was made by Mr Hoffman, followed by an email from Ms Thompson.

- 22. Who spoke to Mr. Hoffman and Ms. Thompson on behalf of the Claimant in June 2022?**

Mr Rossano.

- 23. On 10 January 2023, Mr. Hoffman called Mr. Rossano to inform him that the price of fish due to be delivered in February would increase. Did the Respondent initiate negotiation over the price of fish, or simply state the price would increase in February? Why was the Respondent surprised that the Claimant turned down the price increase offer? What was the consequence of the Claimant turning down the offer? At what price was the fish subsequently sold to the Claimant?**

The Respondent submitted that they intended to inform the Claimant that there would be a price increase and initiate a negotiation as to the specific increase. Thus, it was surprised that the price increase was rejected. The subsequent dealings were continued with the agreed price (USD22/kg).

Quality and conformity matters

- 24. Did the Claimant exercise its rights to inspect Fish products upon delivery at Sydney? If so, were any non-conforming Fish Products reported?**

Yes, the goods were inspected by staff on behalf of the Claimant when they arrived. No non-conforming goods were reported.

- 25. When does the term 'early 2023' refer to? [Notice of Arbitration, para 15].**

The first two incidents were reported to the Claimant in March 2023 (as in para 16).

- 26. Were the complaints regarding quality and conformity publicly accessible in any way, or was the only way for the Respondent to become aware of the complaints through communications from the Claimant?**

The Respondent was aware of one incident via social media during 2023 but did not take any further action. They were only aware of the existence of a significant volume of complaints from the Claimant as stated in the previous submissions.

- 27. On what date was Hoffman initially told of the quality issues?**

According to Mr Rossano's witness statement, the communication happened on 20 September 2023.

- 28. How did Mr. Rossano contact Mr. Hoffman on 20 September 2023 to inform him of the alleged incidents?**

The communication was made over the phone.

- 29. Regarding the reported incidents of the negative effects suffered following consumption of the Fish Products, did the Claimant have to compensate their customers for any harm caused?**

The Claimant is a distributor of goods and sell the fish to domestic businesses. They do not deal with disputes with consumers directly. They were involved in negotiations with their buyers regarding remedies and compensations.

- 30. Were more deliveries made by the Respondent to the Claimant subsequent to the 27 September 2023 renegotiation? If so, were these deliveries made in accordance with the renegotiated contract?**

There was only one further delivery made in October 2023 following the original term of the contract. The Claimant only paid the price on the basis of USD20/kg. The Respondent demanded the Claimant to pay the outstanding amount in its Response to the Notice of Arbitration.

31. In relation to the agreement reached between Mr. Hoffman and Mr. Rossano over the phone, which party proposed the three compensatory terms?

According to Mr Rossano's witness statement, Mr Hoffman offered the additional guarantee. The price cut and the right to seek further actions were proposed by Mr Rossano.

32. Did Mr. Rossano receive notification of Mr. Hoffman having received or read the email (e.g. read receipts, email bouncing)?

Yes, Mr Rossano received the read receipt.

33. Following the verbal agreement, Mr. Rossano sent an email to Mr. Hoffman 'to confirm the content of the agreement'. Did the email correspondence also specifically state that an agreement had been reached?

Yes, the email contained the three points listed within paragraph 18.

34. Who informed the Claimant that Mr. Hoffman left the Respondent's company?

According to Mr Rossano's witness statement, he asked his secretary to follow up with the Respondent's company as he did not receive replies from Mr Hoffman in late November. His secretary reported to him in early December that they called the Respondent's company, and the staff answering the phone informed them that Mr Hoffman had left the Respondent's company and took notes on the matter. The secretary later provided him with Ms Yates' contact information on 14 December.

35. Was there an official notice or communication from Zephyr Fishing Corp. about Mr. Hoffman's departure? Can it be confirmed that Ms. Yates had taken responsibility for Mr. Hoffman's duties in their entirety following his resignation?

No official notice or communication was made. Mr Hoffman's duties were shared by other staff during October 2023 and January 2024 until a new staff member was appointed on 1 February 2024.

36. Is there any provided reason for Mr. Hoffman's resignation?

No. The official record (Exhibit R3) only stated that it was for personal reasons. Mr Rossano mentioned, however, in his witness statement that there were rumours that Mr Hoffman left the Respondent's company because the management of the company rejected his proposal of acquiring the company's shares.

37. What was the extent of the interaction between Mr. Rosanno and Mr. Kaley and Ms. Yates before 15 December 2023? Had the Claimant spoken to those two individuals on the phone or communicated via email before?

Mr Rossano stated in his witness statement that he had no direct communication with these two persons prior to 15 December 2023.

38. Did Mr. Rosanno contact Mr. Hoffman multiple times in the months of October and November or was it simply once in October and once in November?

Mr Rossano sent Mr Hoffman a couple of emails and made a few phone calls during this period of time.

39. Ms. Yates explicitly refused to endorse the price cut and further guarantee. Did she provide a response to the third compensatory term, regarding management of complaints?

No.

40. Did the parties go to mediation prior to filing the Statement of Claim on 12 January 2024?

No.

41. Has either party made submissions to the courts at Pacifica regarding this dispute?

No.

42. In refusing to pay the full amount for the October 2023 instalment, did the Claimant make partial payment for the October 2023 instalment?

The Claimant paid at the price of USD20/kg.

43. Did the Claimant send the Incident Reports to Mr. Hoffman or any other agent of the Respondent? If so, when were the Incident Reports sent to the Respondent?

The incident reports were not sent to Mr Hoffman during the communication in September 2023. They were sent to the Respondent during the further communication with Ms Yates in December 2023.

44. Were the incident reports at any stage referred to the 'first-class testing institute' referred to in Clause 3.2 of Respondent's General Warranties?

No.

45. Did Oceanic Star Shipping distribute the goods sold in the previous transactions prior to the complaints on non-conformity?

Yes.

Amendment of the Statement of Claim

46. What is the occupation of the private and confidential source that provided information to the Claimant?

The Claimant did not disclose any information in relation to the source.

47. Had the Respondent been previously convicted of fraud?

No.

48. When was the vessel's contract terminated? [Re: Request to amend the Statement of Claim, para 3].

The first vessel changed ownership on 1 February 2024 and notified the termination of the contract on the same day, effective on 1 March 2024. The second vessel notified the termination of contract on 20 February 2024, effective on 31 March 2024.

49. When will the police investigation into the burglary conclude?

The Respondent submitted that the local police only informed them that the case was still under investigation.

50. Has the information leaked from the burglary been released into the public domain?

No.

51. What was the 'industrial function' attended by Mr. Rossano and Mr. Hoffman? What was the nature of Mr. Rossano and Mr. Hoffman's attendance? Is there evidence to suggest they interacted with one another at this function, or did they merely attend the same event without crossing paths?

The function was organised by the local government of Port Falora, Avernia. About 100 international and local guests relating to the fishing industry were invited, including both Mr Rossano and Mr Hoffman. The photos showed that both were included in one small group of 10-15 people but did not show them communicating with each other.

52. Do the subsidiaries of Alba Global Group interact with each other, or do they generally work in isolation?

Alba Pacific Marine Foods Supply Co. Ltd. and Alba Seafood Importing & Exporting Co. Ltd. run similar businesses in different markets. The allocation of markets was jointly determined by the group company and implemented by the subsidiaries.

53. Does the Claimant have contracts with many fishing companies besides the Respondent? If so, does the Claimant use Oceanic Star Shipping Ltd for all of its shipping activities, or only those containing the Respondent's goods?

The Claimant's submissions showed that they procured seafood products from other fishing companies. The Claimant had used a few different carriers, including Oceanic Star Shipping, for seafood products from other sources.

The arbitration proceeding

54. How was the 3-member tribunal established? Did any arbitration institutions have any involvement in their appointment?

The parties each appointed an arbitrator, and the two arbitrators jointly appointed the presiding arbitrator. No arbitration institutions were involved.

55. With regards to scope of this arbitration hearing outlined at paragraph 4 of Procedural Order No. 2, does ground C require written submissions and oral argument on:

- a. The application of the legal tests to the facts; and**
- b. Remedies?**

This hearing will only focus on the specified preliminary issues. As agreed by the parties, further submissions on the substances of the conformity and non-performance issues would need to be based on further fact-finding and witness examination and will be the focus of the next hearing.

56. Is it possible for teams to present a different argument from that set out in the submitted memorandum?

Yes, as long as the argument is generally in line with the facts and reliefs sought.

57. Are both parties using the UNCITRAL Model Law on International Commercial Arbitration?

All countries involved in this dispute adopted the UNCITRAL Model Law.

58. What rules are agreed by both parties for the basis of evidence production?

No express agreements were reached between the parties regarding evidence.

59. Have Zephyr Fishing Corp. brought any legal proceedings against the Claimant, other than attending this arbitration?

No.

60. What are the laws of evidence in Sylvania and Pacifica?

Sylvania's Civil Procedure Law is a verbatim adoption of the German Code of Procedure. Pacifica's Evidence Law is a verbatim adoption of the Uniform Evidence Act in Australia.

