

GAFTA COURT RULES UZBEK CO SHOULD PAY FOR GRAIN SHIPMENTS

The arbitration court under London's Grain and Animal Feed Trade Association (GAFTA) has satisfied claims made by Switzerland's Romak against Uzdon, an Uzbek state foreign trade firm that is the trading subdivision of state-run Uzkhleboprodukt, and ordered the Uzbek side to pay out around \$11 million.

Romak representative Daniel Platscher told Interfax that the case arose when Uzdon failed to pay for Kazakh wheat supplied by Romak.

In 1996, Romak supplied 40,580 tonnes of wheat to Uzkhleboprodukt under a contract with Uzdon, he said. After insistent requests from the Uzbek side for urgent deliveries, Romak shipped 40,000 tonnes of grain in July-August before receiving a letter of credit that Uzkhleboprodukt should have opened no later than October 10, 1996, in line with the contract and an additional guarantee that was signed. Romak also received verbal confirmation from the staff of Uzbek Prime Minister Utkir Sultanov that he knew about the deal and supported its implementation.

Platscher said that in recognition of the service supplied, the Uzbek side promised to conclude new contracts with Romak for significant grain shipments.

Hearings at the GAFTA arbitration court showed that the urgent supplies of Kazakh wheat to Uzbekistan were necessary

to compensate for a grain shortfall caused by the annulment of a contract between Uzkhleboprodukt and Tashkent's Odil. This contract was signed in fall 1995. To implement it, Odil got a loan of \$8.1 million from the Uzbek National Bank for Foreign Economic Relations to make prepayment. Since the contract was not implemented in full, Odil's debts to the National Bank were transferred to Uzkhleboprodukt in line with the contract.

In order to cover the shortfall in grain shipments from Odil and to conceal the real situation from the National Bank and superior organizations, Uzkhleboprodukt decided to buy grain urgently from Romak, arbitration court documents show. The quadrilateral agreement signed by Uzkhleboprodukt, Uzdon, Romak and Odil stated that Romak's shipments were internally reckoned under the contract between Odil and Uzdon, while future shipments by Odil would be reckoned under the contract between Romak and Uzdon. Odil guaranteed its shipments would be made immediately following the end of the 1996 harvest season and in strict compliance with the Romak-Uzdon contract.

The agreement also stated that if Odil failed to meet its commitments, the wheat supplied by the Swiss firm would be reckoned under the Romak-Uzdon contract, and Romak would not bear liability for Odil's commitments.

But, Pletscher said, after the Uzbek side received the grain from Romak, it did not meet any of its commitments. Numerous appeals to Uzkhleboprodukt, the guarantor for the deal, and to Sultanov's and Uzbek President Islam Karimov's staffs did not generate the desired result. Romak's shipments of wheat went unpaid for.

Moreover, a letter from the presidential staff received by Romak in March 1997 said that the contract between the Swiss firm and Uzdon could not be considered as valid. The Uzbek side recommended that Romak address all claims for payment to Odil, which by this time had gone bankrupt. The Uzbek side said that Odil had failed to meet its commitments due to force-majeure circumstances.

The arbitration court did not agree with the Uzbek side, and said the attempts by the Uzbeks to transfer the ownership rights to the grain shipped by Romak to Odil were unscrupulous.

The court also said the attempts by the Uzbek president's staff to declare the Romak-Uzdon deal invalid and present it as a deal between Romak and Odil were invalid. As proof, the judges cited three letters from Uzdon to Romak, in which the Uzbek buyer promised to open a letter of credit for payment for the grain by November 10, 1996, (letter of October 24, 1996), asked the vendor to stop charging fines as of January 31, 1997, (letter of February 15, 1997), and asked for payment demands to be redirected to Uzkhleboprodukt, the deal's guarantor (letter of February 18, 1997).

The court said that these letters were clear proof that until February 18, 1997, the buyers recognized not only the legal force of the contract but also their commitment to pay for the grain shipped.

The GAFTA court satisfied Romak's claims against Uzdon and ordered the Uzbek side to pay \$10.51 million and interest for the grain shipment immediately.

But Pletscher said that despite the fact that in line with a New York convention of 1958, Uzbekistan had undertaken to fulfill the decisions of international arbitration courts, in this case the Uzbek side has remained silent. He said that the buyer and some figures in superior state structures were doing everything possible to conceal the need to allocate funds to pay for the grain from the head of state, since it is unlikely that the Odil loan will be repaid.

Pletscher said that Romak had tried to resolve the problem within the bounds of new commercial deals. He said Romak was prepared to write off all or some of Uzdon's debt if the Uzbek side, as was promised earlier, bought a large enough amount of grain at a price that was acceptable to Romak. The Swiss firm also said it was ready to consider settling some of the debt in the form of shares in two mills owned by Odil. After the arbitration court brought in its ruling, these proposals were sent again to Uzdon, Uzkhleboprodukt and the prime minister's staff, but Pletscher said they had gone unheeded.

Pletscher said that if the Uzbek side continued to ignore the GAFTA ruling, Romak would have to use all legal methods to restore justice and receive payment. He said that this could have negative consequences for Uzbekistan's "good reputation."

An Interfax correspondent in Uzbekistan asked Bakhtiyar Kadyrov, head of Uzdon, to comment on the situation, but he refused to comment.