

(On the letterhead of the Tashkent City Commercial Court)

JUDGEMENT
(of appeal instance)

24 November 2000

Tashkent

No. 12173-c

The judicial board of the commercial court's appeal instance, composed of Chairman S.B. Kholbayev, Judge S.A. Shodiyeva and Judge N.V. Lopayeva, in presence of Mr V.I. Yelumeyev, Senior Assistant to the Tashkent City Prosecutor, and also in presence of the representatives of the **applicant**: O. Podmaryova - Attorney at Law, and the **respondent**: V. Osipov, Deputy Director, and R.A. Khachaturov, Legal Advisor, reviewed, in the course of its meeting, the appeal complaint lodged by the representative of Swiss Company Romak S.A. against the Resolution of the Commercial Court, dated 2 October 2000, on return of case files pertaining to a petition lodged by Swiss Company Romak S.A. on recognition and enforcement of Arbitration Award No. 12173 made by GAFTA on 22 August 1997 in relation to the respondent, i.e. FTF Uzdon, (Judge Sh.Z. Saidov), and

FOUND THAT:

according to the contract entered into by Romak S.A. and Foreign Trade Firm Uzdon in 1996, the Swiss company undertook an obligation of supplying 50,000 tonnes of milling wheat to FTF. The terms and conditions of the contract provide for a possibility that any arising disputes be settled by GAFTA Arbitration. Therefore, the claimant lodged a claim to the mentioned Association. Pursuant to GAFTA Arbitration Award, dated 22 August 1997, the amount of 10,510,629.12 US dollars was to be collected from the respondent. Romak S.A. then applied with a petition to the Tashkent City Commercial Court for the recognition and enforcement of that Arbitration Award.

In accordance with the resolution issued by the court of first instance on 2 October 2000, the aforesaid case file was returned.

Correctness of the resolution issued was verified in accordance with Articles 157, 164 and 166 of the Uzbek Civil and Procedural Code following the complaint of the applicant who requested to revoke the resolution and forward the case file for consideration by the court of first instance.

The applicant supported the arguments set out in the complaint and stated that the court of first instance has unlawfully returned the documents, since all materials were submitted in English and Russian, which is considered by the claimant to be sufficient. It was also explained that the applicant did not argue against requirement of the court to provide the case materials in Uzbek and applied with a petition to the court for provision of additional time for translating and certifying the documents. However, the court did not take this into consideration. In addition, an evidence of due notification of the Uzbek party about the arbitration is constituted by correspondence between the parties. Additional evidences could also be submitted by the applicant if additional time was provided.

The respondent, as per the presented response, argued against the complaint and requested that the complaint be turned down. Besides that, the respondent's representative explained

that, in so far as no product contemplated by the contract was received by FTF Uzdon from Romak S.A., the applicant's claims are unlawful. The respondent also stated that the contract in question should be considered as the parties' intention to enter into a proposed transaction, because it bears neither a date nor a number, and was not performed given that Uzdon was not given a quota. That was why the a letter of credit was not issued. Without the letter of credit, no supply should be made. As such, GAFTA was not entitled to accept this dispute for consideration, since, according to the GAFTA Arbitration Rules, the disputes that arise from the conditions of performance of a contract entered into shall be accepted for consideration.

A representative of the prosecutor's office asserted that it was necessary to leave the court deed unchanged.

The judicial board, having heard the parties' arguments and the prosecutor's opinion who considered that it was necessary to keep the court's resolution in force, and also having reviewed the case file and the documents submitted, finds that the appeal complaint shall not be subject to satisfaction on the following grounds:

- pursuant to Articles 2 and 4 of the Convention on Recognition and Enforcement of Foreign Arbitration Awards (New York, 1958), in order to obtain recognition and enforcement of an arbitration award, a party requesting such recognition must submit a properly certified arbitration award and a written agreement on the official language of the country where such recognition and enforcement of such award is sought. So far as the official language of the Republic of Uzbekistan is the Uzbek language, the applicant did not meet this requirement, thus the court of first instance returned the case file lawfully;
- besides that, the consideration of case in substance could not be completed because no evidences of due notification of the party, against which the arbitration award was made, were enclosed to the petition on recognition and enforcement, since the specified evidences also were not submitted by the applicant, even after a break of the court hearing, though the applicant's representative stated that such evidences were available;
- in addition, the Judgement of the Presidium of the Supreme Commercial Court of the Republic of Uzbekistan, dated 26 March 1998, recommended that where necessary documents are not available or are executed improperly, petitions on recognition and enforcement shall be returned to an applicant,

therefore, the resolution made by the court of first instance should be acknowledged as lawfully issued, and the arguments advanced in the complaint shall be acknowledged as unsubstantiated. No court expenses shall be subject to charging.

Based on Articles 2 and 4 of the Convention on Recognition and Enforcement of Foreign Arbitration Awards and Articles 151 and 223 of the Uzbek Civil and Procedural Code,

THE COURT MADE THE FOLLOWING JUDGEMENT:

the complaint laid by Romak S.A. shall not be satisfied,

resolution of the commercial court on case No. 12173, dated 2 October 2000 shall be kept unchanged.

The judgement may be appealed within a month by lodging a cassation complaint to the

Supreme Commercial Court through the Tashkent City Commercial Court.

Chairman

(signature)

S.B. Kholbayev

Judges

(signature)

S.A. Shodiyeva

(signature)

N.V. Lopayeva