" УЗДОНМАХСУЛОТ" ДАВЛАТ АКЦИОНЕРЛИК КОРПОРАЦИЯСИ
ГОСУДАРСТВЕННАЯ АКЦИОНЕРНАЯ КОРПОРАЦИЯ "УЗХЛЕБОПРОДУКТ"
"UZWHEATPRODUCT" STATE STOCK CORPORATION

"УЗДОН" ТАШКИ САВДО ФИРМАСИ	ВНЕШНЕТОРГОВАЯ ФИРМА "УЗДОН"	"UZDON" FOREIGN TRADE FIRM
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Arbitration of GAFTA
(The Grain And Feed Trade Association)
TO: Pamela Kirby Jonson

Dear Sirs!

Further to our letter of February 9th 1998 we very much regret say that we can't agree to award of GAFTA Arbitration of August 22 Th. 1997.

We are sorry to inform that GAFTA, appealed to settle the dispute, based their proofs on the formal signs without taking into consideration all the profundity of this problem. As a result the adapted award put all the participants in such a situation when it (award) can not de applied because of its contradicting the law and in our opinion this is the very reason, which makes it impracticable.

So, let us give a detailed account of the matter again.

1. In July 1996 the Contract was concluded between "Romak, S.A." and FTF "Uzdon". The contract contained a clause that if the parties were unable to reach a mutually acceptable solution, disputes would be submitted for arbitration to GAFTA London for final and binding arbitration as per the Rules of GAFTA № 125.

We would like to emphasise the fact that the text of that term provides for settling of arguments only within the valid contract and has nothing to do with the procedure of its coming into force.

We are sorry to say that Arbitration didn't take into consideration this above mentioned fact and easily came to a conclusion "that under English Law the contract as signed was valid without any further processes".

As for coming into force of the contract signed on the territory of Uzbekistan, after its signing it is essential for number of obligatory procedures. If such procedures are not performed the contract is considered to be invalid. There procedures were established by Decrees of President and the Government of the Republic of Uzbekistan and, naturally, bearing in mined this system of signing contracts and agreements, the moment of coming into force of contract can not be determined by legislation of other countries.

Before signing the contracts on the territory of Uzbekistan, all the foreign partners are always notified about this system, including Mr. Pletcher, who has been working in Uzbekistan for several years and is well informed about such procedures.

So from the objective standpoint, the conclusion of arbitration concerning coming into force of the Contract was outside their competence and that became their first mistake, which in further led to the wrong award because as a subject of dispute was taken the invalid contract.

As according to the Rules of FOREIGN TRADE FIRM «Uzdon» «The aim of the firm's activity is the provision of centralised grain deliveries»,

FTF «Uzdon» couldn't start performing because of non-obtaining of quota for centralised import to «Romak» Company.

We tried to attract the arbitrators attention to the fact that the contract had been signed to the account of future possible quotes for import of grain, however, it wasn't accepted as an agreement.

At the same time point 7 of the Quadripartite agreement contains exactly such a provision and «Romak» on their part agreed to it, realising that coming into force the Contract was possible only on that condition.

It is impossible to deny the obvious fact, that the real grain deliveries were being executed exclusively under the contract №6-2/005 of October 2nd 1995 according to point 7.8 it was supposed that «In case of founding of the organization for foreign economic relation within GAK «Uzhleboprodukt», it will be the authorized successor of the present Contract and all the obligations under it.» The Contract №6-2/005 wasn't transferred to «Uzdon» firm and «Romak» were well informed about that fact. It is evident from the Romak's letters confirming the deliveries executed not under the undated contract, but under the contract №6-2/005. Nevertheless in award of Arbitration is ascertained the following:

«We do not accept that, having a contract with Buyers which provided for deliveries under it to be internally counted against contract №6-2/005, Sellers then voluntary made deliveries outside that Contract as agents for Odil.»

It's surprising that arbitrators came to this conclusion despite of the fact that, on one hand «Romak» themselves confirmed it by their letters and, on other hand there were no proofs of deliveries, executed under the undated contract on the account of «Uzdon».

Moreover, there are some other documents, confirming that "Romak S A " were delivering grain to Uzbekistan, acting as the agent of "Rukin & Schwarzgorn" firm, and this fact can be regarded as the evidence that "Romak S.A." theoretically could have been the agent of any other firm, including ODIL as well.

As we have underlined above your award is based on the formal signs. And what can it give to "Romak S.A."? Only moral satisfaction, because the award is addressed not to the real defendant.

What does the award of Arbitration oblige FTF "Uzdon" to? Mainly to the legal proceedings in Arbitration, but the claim will be turned down at its first stage awing to absence of the subject of dispute.

That is why FTF "Uzdon" can not proceed with Arbitration against Odil as there are no any documents, confirming the deliveries of grain to "Uzdon".

We are not sure that Arbitration will revise this rather accepted matter, but if the award remains in its present state, the real culprit will be unattainable for low.

Chief Legal Adviser
of FTT «Uzdon» Tulaganov. R.R