

**TENTH ANNUAL
WILLEM C. VIS
INTERNATIONAL
COMMERCIAL ARBITRATION MOOT**

Vienna, Austria
April 11 to 17, 2003

THE PROBLEM

Organized by:

Institute of International Commercial Law
Pace University School of Law
78 North Broadway
White Plains, NY 10603
USA

Joseph Langweiler
Lawyer
14 Capitol Boulevard
Oceanside, Equatoriana

23 May 2002

German Institution of Arbitration (DIS)
Beethovenstr. 5 – 13
D-50674 Cologne, Germany

Dear Sirs:

I represent Equafilm Co., which hereby gives notice that it wishes to commence an arbitration against Medipack S.A. under the English language version of the Arbitration Rules of the German Institution of Arbitration (DIS). The statement of claim with supporting exhibits is enclosed in the requisite number of copies.

Payment will be made for the administrative costs and the provisional advance on the arbitrator's costs as provided in section 7 of the Rules upon receipt of your invoice.

Sincerely,

(Signed)

Counsel
Equafilm Co.

Encl: Statement of Claim

German Institution of Arbitration (DIS)

EQUAFILM CO.
Claimant

v.

MEDIPACK S.A.
Respondent

STATEMENT OF CLAIM

I. Parties

1. Equafilm Co. (hereafter referred to as "Equafilm") is a corporation organized under the laws of Equatoriana. It has its principal office at 214 Commercial Ave., Oceanside, Equatoriana. The telephone number is 555-1212 and the fax number is 555-1214. Equafilm is a producer of polypropylene film used for packaging food products.

2. Medipack S.A. (hereafter referred to as "Medipack") is a corporation organized under the laws of Mediterraneo. It has its principal office at 395 Industrial Place, Capitol City, Mediterraneo. The telephone number is 483-5800 and the fax number is 483-5810. Medipack is a printer and manufacturer of flexible packaging products such as large and small sachets for foodstuffs and the like.

II. Facts

3. In November 2000 Mr. Herbert Storck, Sales Manager of Equafilm, telephoned Mr. Reginald Black, Purchasing Manager of Medipack, to discuss the possibility of furnishing Medipack with the Oriented Polypropylene film that it used to manufacture packaging products. After a period of discussions Mr. Storck submitted a final offer in writing. In view of the quantities that Equafilm could expect to sell to Medipack each year, it offered Medipack a discount of eight percent from its list price for the order that was anticipated. (Claimant's Exhibit No. 1) It was noted in the letter conveying the offer that the price was unusually low; that it was in fact the lowest price Equafilm had ever given any customer for any purchase. The usual price offered by Equafilm to favored customers was stated to be a discount of four percent from its list price.

4. Medipack accepted the offer and a contract was signed on 15 December 2000 for 200 tons of 1100 mm wide, 30 micron thick, opaque white OPP (Oriented Polypropylene) film (to ASTM Standard D2673-99). The film was to be shipped from Oceanside CIF to Capitol City Port in four equal shipments on or prior to the 10th of the months of January, February, March and April 2001. The total contract price was \$353,927. Payment for each installment was due 30 days after shipment. (Claimant's Exhibit No. 2) The film was shipped and paid for as contracted.

5. On 3 April 2001 Mr. Reginald Black telephoned to Mr. Herbert Storck to discuss a new order. He told Mr. Storck that Medipack had received a large order for sachets to be used for a wide range of pasta sauces. As a result, they would need 1350 tons to be delivered over a nine-month

period of time. After the telephone conversation he sent Mr. Storck by telefax a confirmation of the contract that had been concluded between the two firms during the telephone conversation. The terms were to be the same as in the contract of 15 December 2000, with adjustments for the dates of shipment and the fact that Equafilm's list price had risen to \$1,900 in the meantime in line with those of the industry. (Claimant's Exhibit No. 3).

6. The same day, 3 April 2001, Equafilm sent its own confirmation form in which the price set forth was \$2,615,809, i.e., Equafilm's then current list price of \$1,900 less four percent plus CIF charges. A four percent discount from list was Equafilm's "best price", as it had previously indicated that Medipack would receive. (Claimant's Exhibit No. 4) When Mr. Black received the confirmation form on 6 April 2001, he replied by telefax to Mr. Storck that the price should have reflected an eight percent discount. (Claimant's Exhibit No. 5) Mr. Storck in turn replied by telefax on 9 April 2001 that the eight percent discount from Equafilm's list price had been granted for the first purchase by Medipack, but that it had never been intended or agreed that such a discount would apply to all future orders. (Claimant's Exhibit No. 6)

7. Mr. Black replied by telefax on 10 April 2001 that Medipack had considered purchasing its requirements of film from Equafilm only because Equafilm had agreed to give Medipack an eight percent discount on its purchases. Unless Equafilm gave Medipack an eight percent discount from list, it would have to consider seriously returning to its previous supplier for its future requirements of polypropylene film. He requested Mr. Storck to reply immediately. (Claimant's Exhibit No. 7)

8. Mr. Storck replied on 12 April 2001 that, as he had already explained, the discount granted in the contract of 15 December 2000 had been a one-time discount to encourage Medipack to initiate purchasing from Equafilm. He regretted if there had been a misunderstanding in this regard, but that it would not be possible for Equafilm to grant such a discount on each order. He reminded Mr. Black that Equafilm already had prices that were at the lower end of those in the industry. He regretted that Medipack was thinking of ending the relationship between the two firms that had begun so well. (Claimant's Exhibit No. 8)

9. Since Medipack had not replied to Mr. Storck's fax of 12 April 2001, Mr. Storck sent a new fax on 27 April 2001 inquiring as to Medipack's intentions. (Claimant's Exhibit No. 9) Mr. Black replied on 2 May 2001 that Medipack had returned to Polyfilm GmbH as its supplier of polypropylene film. (Claimant's Exhibit No. 10)

10. The telefax sent by Mr. Black to Mr. Storck confirming the contract for 1350 tons of polypropylene film concluded during the telephone conversation of 3 April 2001 referred back to the contract of 15 December 2000 and stated that the "Payment, shipping and similar terms of your conditions of sale are to be as in the contract of 15 December 2000, with the obvious adjustments of dates", thereby incorporating those terms into the new contract.

11. Equafilm's gross margin on the manufacture of polypropylene film of the contract quality is twenty-two (22) percent.

III. Arbitration clause, applicable law

12. The contract of 15 December 2000 contained in its clause 12 the following provision:

"12. **Choice of Law.** This contract is subject to the commercial law of Equatoriana."

13. Equatoriana is a party to the United Nations Convention on Contracts for the International Sale of Goods and has not made the reservation under article 95. The Convention is, therefore, part of the commercial law of Equatoriana. Consequently, the Convention is the law governing the formation of the contract of sale as well as the rights and obligations of the parties as seller and buyer. Furthermore, the rules of private international law, or conflicts of law, of both Equatoriana and Mediterraneo provide that the law governing a contract of sale, as well as its formation, is that of the seller. Since the seller is from Equatoriana, the governing law would be that of Equatoriana even if there were no choice of law clause. Equatoriana has two laws of sale, of which the Convention is the law governing international sales of goods.

14. The contract of 15 December 2000 contained in its clause 13 the following provision:

“13. **Arbitration** Any controversy or claim between Equafilm Co. and Medipack S.A. arising out of or relating to this contract shall be determined by arbitration in accordance with the rules of the German Arbitration Association by a panel of three arbitrators with the place of arbitration being Vindobona, Danubia and the language of the arbitration English.”

15. Since there is no organization by the name of the German Arbitration Association and the German Institution of Arbitration (DIS) is the only arbitration institution in Germany generally available for international commercial arbitration, it is obvious that the name of the arbitral institution in the arbitration clause is a mistranslation of the name of the Deutsche Institution für Schiedsgerichtsbarkeit e.V.

IV. Legal Conclusions

16. The arbitral tribunal has jurisdiction in accordance with the arbitral clause found in clause 13 of the contract of 15 December 2000, incorporated by reference in the contract concluded by telephone on 3 April 2001 and confirmed by the exchange of confirmations the same day. The contract was for 1350 tons of 1100 mm wide, 30 micron thick, opaque white OPP (Oriented Polypropylene) film (to ASTM Standard D2673-99) to be delivered in nine monthly installments to be shipped on or before the 10th of the month commencing 10 May 2001. The price was \$1,900 per ton with a discount of four percent plus CIF charges Oceanside to Capitol City Port for a total of \$2,615,809. Medipack breached the contract by its telefaxes of 10 April and 10 May 2001.

IV. Relief

17. Equafilm requests the Tribunal to find:

- the Tribunal has jurisdiction to consider the dispute between Equafilm and Medipack;
- Equafilm and Medipack concluded a contract for the sale of 1350 tons of polypropylene film during the telephone conversation between Mr. Black and Mr. Storck on 3 April 2001;
- The contract price for the goods was \$2,615,809 CIF Oceanside to Capitol City Port, which included a four percent discount from Equafilm's then current list price;
- Medipack breached the contract by its telefax of 10 April 2001 in which it announced that it would not take delivery of the contracted for goods except for a price of \$2,359,800 plus CIF charges and 10 May 2001 in which it stated that it had

contracted with Polyfilm GmbH for the polypropylene film that it had expected to purchase from Equafilm.

18. Consequently, Equafilm requests the Tribunal to order:

- Medipack to pay Equafilm the sum of \$575,477.98 as damages, being the lost profit Equafilm would have earned on the contract;
- Medipack to pay interest at the prevailing market rate in Equatoriana on the said sum from the date payment was due, i.e., 30 days from the 10th day of May, June, July and August 2001 to the date of payment to Equafilm;
- Medipack to pay all costs of arbitration, including costs incurred by the parties.

(Signed)
Counsel

23 May 2002

Claimant's Exhibit No. 1

EQUAFILM CO.
214 Commercial Ave.
Oceanside
Equatoriana

7 December 2000

Mr. Reginald Black
Purchasing Manager
MEDIPACK S.A.
395 Industrial Place
Capitol City, Mediterraneo

Dear Mr. Black:

I wish to express my pleasure at the prospect that our two firms will enter into a long-term relationship. I know that you will be more than satisfied with the OPP that you will receive from us. Furthermore, you can be sure that, in view of the quantity you have indicated MEDIPACK S.A. purchases each year, you will always receive our best price. As you know, our list prices are in any case consistently among the lowest in the industry.

To recapitulate our telephone conversation of this morning, you are placing a first order for a four months supply of 50 tons per month 1100 mm wide, 30 micron thick, opaque white OPP (Oriented Polypropylene) film (to ASTM Standard D2673-99), list price \$1,800 per ton. Shipment will be Oceanside on or before the tenth day of the month of January, February, March and April 2001. You will be billed CIF Capitol City Port. You will receive a discount of eight percent from our list price, which is an unusually low price. In fact it is the best price we have ever given any customer for any purchase. Our usual price for favored customers is a discount of four percent from our list price.

Since this is the first order you are placing with us, we will send you a formal contract for your signature.

Sincerely,

(Signed)
Herbert Storck
Sales Manager

Claimant's Exhibit No. 2

Contract (Excerpts)

Equafilm Co. agrees to sell and MEDIPACK S.A. agrees to buy 200 tons 1100 mm wide, 30 micron thick, opaque white OPP (Oriented Polypropylene) film (to ASTM Standard D2673-99) at \$1,656 per ton plus CIF charges.

1. Price is \$353,927 CIF Oceanside to Capitol City Port.

2. **Shipment** to be in four equal installments of 50 tons each. The first shipment to be made on or before 10 January 2001 with subsequent shipments to follow at one month intervals on or before 10 February 2001, 10 March 2001 and 10 April 2001.

3. **Payment** is to be made in installments by transfer to the account Equafilm Co., account number 00123456789 in the Equatoriana Commercial Bank, Oceanside Branch. Payment is due 30 days after notification by Equafilm Co. of delivery to the port for shipment.

* * *

12. **Choice of Law.** This contract is subject to the commercial law of Equatoriana.

13. **Arbitration.** Any controversy or claim between Equafilm Co. and Medipack S.A. arising out of or relating to this contract shall be determined by arbitration in accordance with the rules of the German Arbitration Association by a panel of three arbitrators with the place of arbitration being Vindobona, Danubia and the language of the arbitration English.

(Signed) _____
Sales Manager
EQUAFILM CO.

(Signed) _____
Purchasing Manager
MEDIPACK S.A.

15 December 2000

Claimant's Exhibit No. 3

MEDIPACK S.A.
395 Industrial Place
Capitol City, Mediterraneo

3 April 2001

Mr. Herbert Storck
Sales Manager
EQUAFILM CO.
214 Commercial Ave.
Oceanside, Equatoriana

By fax

Dear Mr. Storck:

I am pleased to confirm our telephone conversation of today in which it was agreed that Medipack S.A. would purchase 1350 tons of 1100 mm wide, 30 micron thick, opaque white OPP, quality as in current contract. Payment, shipping and similar terms of the contract of 15 December 2000 are to apply.

Shipment is take place on or before the 10th of the months of May 2001 through January 2002. Since your list price has risen to \$1,900 per ton in line with price movements in the industry, the discounted price we are to pay will be increased accordingly.

I will have a purchase order sent to you within the next week.

Sincerely,

(Signed)
Reginald Black
Purchasing Manager

Claimant's Exhibit No. 4

EQUAFILM CO.
214 Commercial Ave.
Oceanside
Equatoriana

3 April 2001

Mr. Reginald Black
Purchasing Manager
MEDIPACK S.A.
395 Industrial Place
Capitol City, Mediterraneo

Dear Mr. Black:

We hereby confirm that we have received your order for 1350 tons of 1100 mm wide, 30-micron thick, opaque white OPP (Oriented Polypropylene) film. Price CIF Oceanside to Capitol City Port is \$2,615,809, including a discount of four percent from our current list price of \$1,900 per ton. Payment is to be made for each shipment within 30 days after notification by Equafilm Co. of delivery to the port for shipment. Shipment to be in nine monthly installments. First shipment on or before 10 May 2001. All other provisions in contract dated 15 December 2000 to apply.

(Signed) _____
Herbert Storck
Sales Manager

Claimant's Exhibit No. 5

MEDIPACK S.A.
395 Industrial Place
Capitol City, Mediterraneo

6 April 2001

Mr. Herbert Storck
Sales Manager
EQUAFILM CO.
214 Commercial Ave.
Oceanside, Equatoriana

By fax

Dear Mr. Storck:

I have received your confirmation of our contract and it has a major error in regard to the price. You will remember that you had agreed that Medipack S.A. would receive an eight percent discount from your list price.

It appears that the price that has been inserted into your confirmation form represents a four percent discount.

I would ask you to confirm that the correct price for this order is \$2,359,800 plus CIF charges.

Sincerely,

Reginald Black
Purchasing Manager

Claimant's Exhibit No. 6

EQUAFILM CO.
214 Commercial Ave.
Oceanside
Equatoriana

9 April 2001

Mr. Reginald Black
Purchasing Manager
MEDIPACK S.A.
395 Industrial Place
Capitol City, Mediterraneo

Dear Mr. Black:

It appears that there has been some confusion in our communications for which I am truly sorry. We are very pleased with the prospect that our two firms have entered into what promises to be a long-term relationship. I wrote you in my fax of 7 December 2000 that MEDIPACK S.A. would receive our best price, and we intend to carry through on our promise.

To show our appreciation for our new relationship, we were able to offer you a special eight percent discount from our list price for your first order. As you will recall, that is the largest discount we have ever given to any customer, but that our normal best price is a discount of four percent from list.

I am sure you will appreciate that a four percent discount from our list price, which remains as favorable price as you will find, is extremely advantageous for you.

We are happy to be able to report that we have booked space for shipment of the first quantity of 150 tons of polypropylene film during the period of 25-28 April 2001. You should be in a good position to meet your own commitments.

Sincerely,

(Signed)
Herbert Storck
Sales Manager

Claimant's Exhibit No. 7

MEDIPACK S.A.
395 Industrial Place
Capitol City, Mediterraneo

10 April 2001

Mr. Herbert Storck
Sales Manager
EQUAFILM CO.
214 Commercial Ave.
Oceanside, Equatoriana

By fax

Dear Mr. Storck:

As you know, we have had a long-standing and satisfactory relationship with Polyfilm GmbH, from whom we have been purchasing our requirements of film. We decided to commence buying from Equafilm Co. exclusively because of the advantageous price that you offered us by means of an eight percent discount from your list price.

If you do not intend to keep your commitment to us to give us an eight percent discount from your list price, we will have to consider seriously returning to Polyfilm GmbH for our future requirements of polypropylene film.

I await your immediate response.

Sincerely,

Reginald Black
Purchasing Manager

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Claimant's Exhibit No. 8

EQUAFILM CO.
214 Commercial Ave.
Oceanside
Equatoriana

12 April 2001

Mr. Reginald Black
Purchasing Manager
MEDIPACK S.A.
395 Industrial Place
Capitol City, Mediterraneo

Dear Mr. Black:

As I have already explained to you in my telefax of 9 April 2001, the discount of eight percent from our list price that we gave to you in the contract of 15 December 2000 was a one-time discount to encourage Medipack S.A. to initiate purchasing from us. We were sure that once you had made a first purchase from us, you would become a long-term customer.

The price we quoted you last December was so much below both our own list price and the industry price at the time that there could have hardly been an expectation on your part that it would apply to all purchases from us in the future. We are still prepared to grant to Medipack S.A. our best price, which reflects a four percent discount from our list price. Considering that our list price is consistently at the lower end of those in the industry, we are sure that you will agree that you will find no better arrangement for your needs of polypropylene film.

I look forward to hearing from you shortly.

Sincerely,

(Signed)
Herbert Storck
Sales Manager

Claimant's Exhibit No. 9

EQUAFILM CO.
214 Commercial Ave.
Oceanside
Equatoriana

27 April 2001

Mr. Reginald Black
Purchasing Manager
MEDIPACK S.A.
395 Industrial Place
Capitol City, Mediterraneo

Reference: My telefax 12 April 2001

Dear Mr. Black:

It has now been over two weeks since my last telefax to you in regard to the contract concluded by us on the telephone on 3 April 2001. I had hoped to hear from you by return message that you accepted our explanation of our pricing policy. To my disappointment that has not been the case as yet.

We have cancelled the booking for 25-28 April 2001 but we have been promised space scheduled to sail 5 May 2001.

I would ask you to communicate to me your intentions so that we can confirm the booking.

Sincerely,

(Signed)
Herbert Storck
Sales Manager

Claimant's Exhibit No. 10

MEDIPACK S.A.
395 Industrial Place
Capitol City, Mediterraneo

2 May 2001

Mr. Herbert Storck
Sales Manager
EQUAFILM CO.
214 Commercial Ave.
Oceanside, Equatoriana

By fax

Reference: Your telefax of 27 April 2001

Dear Mr. Storck:

I need not repeat what I already told you in my fax of 10 April 2001. Although we have been completely satisfied with the quality of the Oriented Polypropylene that you have been shipping to us, it offers us no particular advantages as against the Oriented Polypropylene we have been receiving from Polyfilm GmbH in the past.

When you offered us a discount of eight percent from your list price, and your list price is in line with what is normal in the industry, we thought it would be worthwhile to commence purchasing from you. A discount of four percent is not enough, however.

As a result, we have placed an order with Polyfilm GmbH for the polypropylene film that we had expected to purchase from you.

Sincerely,

Reginald Black
Purchasing Manager

**By mail
and telefax**

Joseph Langweiler
Lawyer
14 Capitol Boulevard
Oceanside
Equatoriana

DEUTSCHE DIS
INSTITUTION FÜR
SCHIEDSGERICHTSBARKEIT E.V.
BERLIN – KÖLN

GERMAN INSTITUTION
OF ARBITRATION

INSTITUT ALLEMAND
DE L'ARBITRAGE

HAUPTGESCHÄFTSSTELLE
BEETHOVENSTR. 5 – 13,
5 0 6 7 4 K Ö L N
TELEFON 02 21 - 28 55 20
TELEFAX 02 21 - 28 55 22 22
E-MAIL DIS@DIS-ARB.DE
INTERNET WWW.DIS-ARB.DE

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TELEFON 030 - 31 51 05 89
TELEFAX 030 - 31 51 01 20

Cologne, 27 May 2002

**Arbitral Proceedings
Equafilm Co. vs/ Medipack S.A.
DIS-SV-B-Moot 10**

Dear Mr. Langweiler,

In the above proceedings, the statement of claim dated 23 May 2002 has been received by us on 27 May 2002 in 5-fold.

Pursuant to Article 13 of the contract between the parties to these proceedings dated 15 December 2000:

"Any controversy or claim between Equafilm Co. and Medipack S.A. arising out of or relating to this contract shall be determined by arbitration in accordance with the rules of the German Arbitration Association by a panel of three arbitrators with the place of arbitration being Vindobona, Danubia and the language of the arbitration English."

In case the defendant raises an objection as to the applicability of the Arbitration Rules of the German Institution of Arbitration (DIS), the arbitral tribunal decides on the validity of the arbitration agreement, respectively the application of the DIS Arbitration Rules.

Pursuant to Section 7 of the DIS Arbitration Rules, the claimant has to pay to the DIS the administrative fee as well as a provisional advance on the arbitrators' costs.

In accordance with the arbitration agreement, the arbitral tribunal consists of three arbitrators. The statement of claim does not contain the nomination of an

arbitrator as required by Section 6 sub. 2 No. 5 of the DIS Arbitration Rules in such case.

Based on your submissions, the amount in dispute is provisionally fixed at EUR 586,982.00 (= \$ 575,477.98). According to the Schedule of Costs attached to the DIS Arbitration Rules, the DIS administrative fee amounts to EUR 6,369.82 + 16 % VAT = EUR 7,388.99; the provisional advance on the arbitrators' costs, according Section 7 of the DIS Arbitration Rules as read with No. 14 of the Schedule of Costs, amounts to EUR 12,593.78.

An invoice made out to the claimant is enclosed.

We request payment of the amount totalling EUR 19,982.78 by bank remittance - specifying our Case No. DIS-SV-B 123/02 to our bank account at

Big German Bank
Account No. 98 65 32 01
Sort Code 250 32 32.

You are requested to submit

**your nomination of an arbitrator
as well as payment of EUR 19,982.78**

not later than **23 August 2002**.

We wish to draw your attention to Section 6 sub. 4, respectively Section 7 sub. 2 of the DIS Arbitration Rules, pursuant to which the proceedings are terminated if the nomination is not received and payment is not made within the time-limit set above.

The statement of claim will be delivered to the respondent pursuant to Section 8 without undue delay upon receipt of the nomination of an arbitrator and of the payment.

With notification of the claim, the respondent will be called upon to nominate an arbitrator pursuant to Section 12 sub. 1 of the DIS Arbitration Rules.

Two copies of the DIS Arbitration Rules 1998 in English are enclosed.

Yours sincerely

Jens Bredow
Secretary General

Encs.: - Invoice
- DIS Arbitration Rules

Equafilm Co.
214 Commercial Ave.
Oceanside

Equatoriana

DEUTSCHE DIS
INSTITUTION FÜR
SCHIEDSGERICHTSBARKEIT E.V.
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Cologne, 27 May 2002

Arbitral Proceedings
EQUAFILM Co. ./ MEDIPACK S.A.
DIS-SV-B-Moot 10

Invoice

Provisional amount in dispute:
586,982.00 EUR (= \$ 575,477.98)

DIS Administrative Fee

pursuant to Sec. 7 sub. 1 DIS	6.369,82 EUR
plus 16% VAT	<u>1.019,17 EUR</u>
Subtotal	7.388,99 EUR

Provisional Advance on arbitrators' costs

pursuant to Sec 7 sub. 1 DIS	<u>12.593,78 EUR</u>
Total	<u>19.982,78 EUR</u>

Banking details:
Big German Bank
Account No. 98 65 32 01
Sort Code 250 32 32

German Institution of Arbitration

Jens Bredow
Secretary General

Joseph Langweiler
Lawyer
14 Capitol Boulevard
Oceanside, Equatoriana

1 June 2002

Mr. Jens Bredow
Secretary General
German Institution of Arbitration (DIS)
Beethovenstr. 5 – 13
D-50674 Cologne, Germany

Arbitral Proceedings
EQUAFILM Co. ./ MEDIPACK S.A.
DIS-SV-B-Moot 10

Dear Mr. Bredow:

I acknowledge receipt of your letter of 27 May 2001 confirming receipt of the Statement of Claim in the above referenced arbitration along with the invoice for the provisional advance of 19.982,78 EUR. A transfer of the said sum to your account has been instituted today.

The claimant, Equafilm Co., hereby nominates Dr., 423 River St., Riverside, Equatoriana as arbitrator in this dispute.

Sincerely,

(Signed)

Counsel
Equafilm Co.

Joseph Langweiler
Lawyer
14 Capitol Boulevard
Oceanside
Equatoriana

DEUTSCHE DIS
INSTITUTION FÜR
SCHIEDSGERICHTSBARKEIT E.V.
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TELEFON 030 - 31 51 05 89
TELEFAX 030 - 31 51 01 20

Cologne, 5 June 2002

Arbitral Proceedings
EQUAFILM Co. ./ MEDIPACK S.A.
DIS-SV-B-Moot 10

Dear Mr. Langweiler,

in the above proceedings, I confirm receipt of your nomination of Dr. as arbitrator as well as of the payment of EUR 19,982.78.

The statement of claim has been transmitted to the respondent under this same date. We will not fail to inform you of the date of receipt of the statement of claim by the respondent.

A copy of the notice of service to the respondent is enclosed for your file.

Yours sincerely,

Jens Bredow
Secretary General

Enc.: - Notice of service dated 5 June 2002

By courier

Medipack S.A.
395 Industrial Place
Capitol City
Mediterraneo

DEUTSCHE DIS
INSTITUTION FÜR
SCHIEDSGERICHTSBARKEIT EV
BERLIN - KÖLN

GERMAN INSTITUTION
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TELEFAX 030 - 31 51 01 20

Cologne, 5 June 2002

**Arbitral Proceedings
EQUAFILM Co. ./ MEDIPACK S.A.
DIS-SV-B-Moot 10**

Dear Madam/Sir ,

In the above matter, Equafilm Co., 214 Commercial Ave. Oceanside, Equatoriana, represented by Joseph Langweiler, Lawyer, 14 Capitol Boulevard, Oceanside Equatoriana, has instituted arbitral proceedings against you on 23 May 2002. The statement of claim was received by us on 27 May 2002.

We are enclosing a copy of the statement of claim dated 23 May 2002.

Article 13 of the contract between the parties to these proceedings dated 15 December 2000 provides that:

"Any controversy or claim between Equafilm Co. and Medipack S.A. arising out of or relating to this contract shall be determined by arbitration in accordance with the rules of the German Arbitration Association by a panel of three arbitrators with the place of arbitration being Vindobona, Danubia and the language of the arbitration English."

Two copies of the Arbitration Rules of the German Institution of Arbitration (DIS) of 1998 in English are enclosed herewith.

Pursuant to the parties' arbitration agreement, the arbitral tribunal shall consist of three arbitrators.

In compliance with Section 6 sub. 2 of the DIS Arbitration Rules, the claimant has nominated:

Dr. ...
(ADDRESS)

as arbitrator.

Pursuant to Section 12 sub. 1 of the DIS Arbitration Rules, we herewith require you to nominate an arbitrator within 30 days of receipt of this letter.

We wish to point out that the arbitrator nominated by you must comply with the requirements of Section 15 of the DIS Arbitration Rules as well as with any specific requirements laid down in the arbitration agreement concluded by the parties.

The arbitrator nominated by you shall, according to Section 16 of the DIS Arbitration Rules, indicate his acceptance of this mandate to the German Institution of Arbitration (DIS) in writing, at the same time disclosing all circumstances which are likely to give rise to doubts as to his impartiality or independence.

Should your nomination not be received within the above-named time-limit, pursuant to Section 12 sub. 1 of the DIS Arbitration Rules, the claimant may request appointment of the second co-arbitrator by the DIS Appointing Committee.

The DIS administrative fee, the amount of EUR 6,369.82 plus 16% VAT amounting to EUR 7,388.99, as well as a provisional advance for the arbitral tribunal amounting to EUR 12,593.78, corresponding to a provisional amount in dispute of EUR 586,982.00, have been transferred by the claimant to our account.

Please supply all written correspondence, documents etc. 5-fold in accordance with Section 4 of the DIS Arbitration Rules.

Yours faithfully,

Jens Bredow
Secretary General

cc.: Joseph Langweiler, Lawyer, Oceanside, Equatoriana
... (ARBITRATOR NOMINATED BY CLAIMANT)

Encs.: Statement of claim dated 23 May 2002
DIS Arbitration Rules 1998 (English)

Dr. ...
(ARBITRATOR NOMINATED
BY CLAIMANT)
(ADDRESS)

DEUTSCHE DIS
INSTITUTION FÜR
SCHIEDSGERICHTSBARKEIT E.V.
BERLIN - KÖLN

GERMAN INSTITUTION
OF ARBITRATION

INSTITUT ALLEMAND
DE L'ARBITRAGE

HAUPTGESCHÄFTSSTELLE
BEETHOVENSTR. 5 - 13,
50674 KÖLN
TELEFON 0221 - 285520
TELEFAX 0221 - 28552222
E-MAIL DIS@DIS-ARB.DE
INTERNET WWW.DIS-ARB.DE

BÜRO BERLIN
BREITE STR. 29
10178 BERLIN
TELEFON 030 - 31 51 05 89
TELEFAX 030 - 31 51 01 20

Cologne, 5 June 2002

Arbitral Proceedings
EQUAFILM Co. ./ MEDIPACK S.A.
DIS-SV-B-Moot 10

Dear Dr.,

You have been nominated as an arbitrator in the above-mentioned dispute. Please find enclosed a copy of the statement of claim and subsequent correspondence.

In compliance with Section 16 of the Arbitration Rules of the German Institution of Arbitration (DIS), you are requested to notify the DIS Secretariat of your acceptance of the office as arbitrator and to declare fulfilment of the qualifications agreed upon by the parties. Further you are required to disclose all circumstances which are likely to give rise to doubts as to your impartiality or independence (Section 15 of the DIS Arbitration Rules).

I am enclosing a copy of the DIS Arbitration Rules 1998 in English

Yours sincerely,

Jens Bredow
Secretary General

Encs. - Statement of claim dated 23 May 2002
- Copy of confirmation of receipt to Claimant dated 27 May 2002
- Copy of invoice dated 27 May 2002
- Copy of statement of service dated 5 June 2002
- DIS Arbitration Rules English

Dr. Herbert Comstock
146 Court Street
Capitol City, Mediterraneo

17 June 2002

Mr. Jens Bredow
Secretary General
German Institution of Arbitration (DIS)
Beethovenstr. 5 – 13
D-50674 Cologne, Germany

Arbitral proceedings
EQUAFILM CO./MEDIPACK S.A.
DIS-SV-B-Moot 10

Dear Mr. Bredow:

Your letter of 5 June 2002 with enclosures, and particularly the statement of claim by EQUAFILM CO. against my client, MEDIPACK S.A., has been referred to me by MEDIPACK S.A.

I should like to inform you that we will contest the jurisdiction of the arbitral tribunal in regard to the dispute between MEDIPACK S.A. and EQUAFILM CO. Since both Art. 16(1) of the UNCITRAL Model Law on International Commercial Arbitration, which is in force in Danubia, and Sec. 1040(1) of the German Arbitration Law provide that it is the arbitral tribunal that decides whether it has jurisdiction of the dispute, I will not bother you further with this.

As you have requested, the respondent should like to nominate Mr. XXXXX as a member of the tribunal.

Sincerely,

Herbert Comstock

Mr.
(ARBITRATOR NOMINATED
BY RESPONDENT)
(ADDRESS)

DEUTSCHE DIS
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TELEFON 030 - 31 51 05 89
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Cologne, 19 June 2002

Arbitral Proceedings
EQUAFILM Co. ./ MEDIPACK S.A.
DIS-SV-B-Moot 10

Dear Mr.,

You have been nominated as an arbitrator in the above-mentioned dispute. Please find enclosed a copy of the statement of claim and subsequent correspondence.

In compliance with Section 16 of the Arbitration Rules of the German Institution of Arbitration (DIS), you are requested to notify the DIS Secretariat of your acceptance of the office as arbitrator and to declare fulfilment of the qualifications agreed upon by the parties. Further you are required to disclose all circumstances which are likely to give rise to doubts as to your impartiality or independence (Section 15 of the DIS Arbitration Rules).

I am enclosing a copy of the DIS Arbitration Rules 1998 in English

Yours sincerely,

Jens Bredow
Secretary General

Enc. Statement of claim dated 23 May 2002
Copy of confirmation of receipt to Claimant dated 27 May 2002
Copy of invoice dated 27 May 2002
Copy of statement of service dated 5 June 2002
Copy of notice of representation/nomination of arbitrator by respondent
DIS Arbitration Rules English

Dr. [*Claimant nominated arbitrator*
Office address]

21 June 2002

Mr. Jens Bredow
Secretary General
German Institution of Arbitration (DIS)
Beethovenstr. 5 – 13
D-50674 Cologne, Germany

Arbitral proceedings
EQUAFILM CO./MEDIPACK S.A.
DIS-SV-B-Moot 10

Dear Mr. Bredow:

I wish to thank you for your letter of 5 June 2002 in which you informed me that I had been nominated by the claimant, EQUAFILM CO., as arbitrator in the above-mentioned dispute.

I have reviewed the statement of claim and wish to affirm that I am willing to serve as arbitrator in the dispute.

I know of no circumstances that are likely to give rise to doubts as to my impartiality or independence.

I await your further communications.

Sincerely,

Dr. [*Claimant nominated arbitrator*]

Dr. (ARBITRATOR NOMINATED BY CLAIMANT)
423 River St.
Riverside
Equatoriana

Mr.
(ARBITRATOR NOMINATED
BY RESPONDENT)
(ADDRESS)

DEUTSCHE DIS
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10178 BERLIN
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TELEFAX 030 - 31 51 01 20

Cologne, 21 June 2002

Arbitral Proceedings
EQUAFILM Co. ./ MEDIPACK S.A.
DIS-SV-B-Moot 10

Dear Sirs,

In the above proceedings, you have both been nominated as arbitrator.

Pursuant to Section 12 sub. 2 of the DIS Arbitration Rules, you are now to nominate the chairman of the arbitral tribunal. We herewith request you to submit your nomination of the chairman to us within a time-limit of 30 days.

If we do not receive your nomination within such time-limit, each party may request nomination of the chairman by the DIS Appointing Committee.

In conclusion, we wish to inform you that pursuant to Section 7 sub. 2 of the DIS Arbitration Rules, the DIS administrative fee of EUR 7,388.99 as well as the provisional advance of EUR 12,593.78, on the basis of the provisional amount in dispute of 586.982.00, have been paid by the claimant.

Yours sincerely,

Jens Bredow
Secretary General

cc. Joseph Langweiler, Oceanside, Equatoriana
Dr. Herbert Comstock, Capitol City, Mediterraneo

Dr. ...
(ARBITRATOR NOMINATED BY CLAIMANT)
423 River St.
Riverside
Equatoriana

DEUTSCHE DIS
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Cologne, 23 June 2002

Arbitral Proceedings
EQUAFILM Co. ./ MEDIPACK S.A.
DIS-SV-B-Moot 10

Dear Dr.,

Thank you for transmitting your declarations pursuant to Section 16 of the DIS Arbitration Rules.

We have forwarded a copy of your statement to the parties involved.

In accordance with Section 17 of the DIS Arbitration Rules, you are herewith confirmed in office as arbitrator.

Yours sincerely,

Jens Bredow
Secretary General

cc. Joseph Langweiler, Oceanside, Equatoriana
Dr. Herbert Comstock, Capitol City, Mediterraneo
Mr. ... (ARBITRATOR NOMINATED BY RESPONDENT)

Mr. ...
(ARBITRATOR
NOMINATED BY RESPONDENT)
(ADDRESS)

DEUTSCHE DIS
INSTITUTION FÜR
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10178 BERLIN
TELEFON 030 - 31 51 05 89
TELEFAX 030 - 31 51 01 20

Cologne, 25 June 2002

Arbitral Proceedings
EQUAFILM Co. ./ MEDIPACK S.A.
DIS-SV-B-Moot 10

Dear Mr.,

Thank you for transmitting your declarations pursuant to Section 16 of the DIS Arbitration Rules.

We have forwarded a copy of your statement to the parties involved.

In accordance with Section 17 of the DIS Arbitration Rules, you are herewith confirmed in office as arbitrator.

Yours sincerely,

Jens Bredow
Secretary General

cc. Joseph Langweiler, Oceanside, Equatoriana
Dr. Herbert Comstock, Capitol City, Mediterraneo
Dr. ... (ARBITRATOR NOMINATED BY CLAIMANT)

Mr. ...
(CHAIRMAN OF ARBITRAL TRIBUNAL)
723 Advocacy Avenue
Vindobona
Danubia

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TELEFAX 030 - 31 51 01 20

Cologne, 30 June 2002

Arbitral Proceedings
EQUAFILM Co. ./ MEDIPACK S.A.
DIS-SV-B-Moot 10

Dear Mr. ...,

In the above-mentioned case, the co-arbitrators, Dr. ... and Mr. ..., have informed the German Institution of Arbitration (DIS) with notice of 30 June 2002 that they nominate you as Chairman of the Arbitral Tribunal.

According to Section 16 of the DIS Arbitration Rules you are required to notify the DIS Secretariat of your acceptance of the office as Arbitrator.

You are also requested to disclose, according to Section 16, all circumstances which are likely to give rise to doubts as to your impartiality or independence (Section 15 of the DIS Arbitration Rules) and to declare your fulfilment of the qualifications agreed upon by the parties.

As soon as the declaration has been submitted, the German Institution of Arbitration will confirm your nomination in accordance with Section 17 of the DIS Arbitration Rules.

We are enclosing a copy of the DIS Arbitration Rules.

A copy of the Statement of Claim dated 23 May 2002 is enclosed for your information. The statement of claim was delivered to the Respondent on 5 June

2002. The arbitrators were furnished with the statement of claim on 5 June 2002, respectively on 17 June 2002.

We also wish to inform you that on 5 June 2002 the Claimant has transferred to our account the sum of EUR 6,369.82 plus 16% VAT, i.e. in total EUR 7,388.99, as well as the provisional advance for the arbitral tribunal required under Section 7, sub. 1 of the DIS Arbitration Rules amounting to EUR 12,593.78 (both payments assessed according to the provisional amount in dispute amounting to EUR 586,982.00 (= \$ 575,477.98). Copy of our invoice to the Claimant dated 27 May 2002 is enclosed for your file.

Kindly advise us of the account details to which the provisional advance for the arbitral tribunal is to be transferred.

Please do not fail to inform us of any change to the amount in dispute before termination of the arbitral proceedings in order that the DIS administrative fee may be amended accordingly and the final figure be taken into account upon termination of the case.

Yours sincerely,

Jens Bredow
Secretary General

cc: Joseph Langweiler, Oceanside, Equatoriana
Dr. Herbert Comstock, Capitol City, Mediterraneo
Dr. ..., (ARBITRATOR NOMINATED BY CLAIMANT)
Mr. ..., (ARBITRATOR NOMINATED BY RESPONDENT)

Encs.: - Statement of claim dated 23 May 2002
- Copy confirmation of receipt to claimant dated 27 May 2002
- Copy invoice dated 27 May 2002
- Copy notice of service to respondent dated 5 June 2002
- Copy declaration of acceptance of Dr. ... (ARBITRATOR/CLAIM.) dated 21 June 2002
- Copy confirmation of Dr. dated 21 June 2002
- Copy nomination of arbitrator by respondent dated 17 June 2002
- Copy declaration of acceptance of Mr. ... (ARBITRATOR/RESP.) dated 21 June 2002
- Copy confirmation of Mr. dated 21 June 2002
- Copy request to nominate chairmant to co-arbitrators dated 21 June 2002
- DIS Arbitration Rules

Mr. ...
(CHAIRMAN OF ARBITRAL TRIBUNAL)
723 Advocacy Avenue
Vindobona
Danubia

DEUTSCHE DIS
INSTITUTION FÜR
SCHIEDSGERICHTSBARKEIT E.V.
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TELEFON 030 - 31 51 05 89
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Cologne, 8 July 2002

Arbitral Proceedings
EQUAFILM Co. ./ MEDIPACK S.A.
DIS-SV-B-Moot 10

Dear Mr. ...,

Thank you for transmitting your declarations pursuant to Section 16 of the DIS Arbitration Rules.

We have forwarded a copy of your statement to the parties involved.

In accordance with Section 17 of the DIS Arbitration Rules, you are herewith confirmed in office as chairman of the arbitral tribunal.

Yours sincerely,

Jens Bredow
Secretary General

cc. Joseph Langweiler, Oceanside, Equatoriana
Dr. Herbert Comstock, Capitol City, Mediterraneo
Dr. ... (ARBITRATOR NOMINATED BY CLAIMANT)
Mr. ... (ARBITRATOR NOMINATED BY RESPONDENT)

Joseph Langweiler
Lawyer
14 Capitol Boulevard
Oceanside
Equatoriana

Dr. Herbert Comstock
146 Court Street
Capitol City
Mediterraneo

DEUTSCHE DIS
INSTITUTION FÜR
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Cologne, 8 July 2002

Arbitral Proceedings
EQUAFILM Co. ./ MEDIPACK S.A.
DIS-SV-B-Moot 10

Dear Sirs,

In the above-mentioned proceedings the chairman of the arbitral tribunal has been confirmed in office today. Since all arbitrators are now confirmed in office, the arbitral tribunal is constituted.

The arbitral tribunal consists of the following persons:

Chairman: Mr.
723 Advocacy Avenue
Vindobona
Danubia

Co-Arbitrators: Dr.
423 River Street
Riverside, Equatoria

Mr.

We wish to point out that henceforth, according to Section 24 sub. 3 of the DIS Arbitration Rules, the Chairman presides over the proceedings.

As from now on, all documents are to be submitted directly to the arbitral tribunal and to the other party (Sec. 5 sub. 1 of the DIS Arbitration Rules) . The arbitrators will contact you without undue delay.

We draw your attention to the provisions applying to the statement of defence (Section 9 of the DIS Arbitration Rules) and to the advance on costs of the arbitral tribunal (Section 25 of the DIS Arbitration Rules).

Yours sincerely,

Jens Bredow
Secretary General

cc: Mr. ..., Chairman, Vindobona, Danubia
Dr. ..., Co-arbitrator, Riverside, Equatoriana
Mr. ..., Co-arbitrator,

Enc: Copy confirmation of Chairman dated 8 July

Mr. ...
(CHAIRMAN OF ARBITRAL TRIBUNAL)
723 Advocacy Avenue
Vindobona
Danubia

Dr. ...
(ARBITRATOR NOMINATED BY CLAIMANT)
423 River Street
Riverside
Equatoriana

Mr.
(ARBITRATOR NOMINATED BY RESPONDENT)
(ADDRESS)

DEUTSCHE DIS
INSTITUTION FÜR
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Cologne, 8 July 2002

Arbitral Proceedings
EQUAFILM Co. ./ MEDIPACK S.A.
DIS-SV-B-Moot 10

Dear Sirs,

As may be seen from the enclosed copy of our letter to the parties, all arbitrators have been confirmed in office and the arbitral tribunal is thus constituted.

The statement of claim has been delivered to the respondent on 7 June 2002 by courier.

The file in the above-mentioned proceedings was forwarded to the Chairman of the arbitral tribunal on , and to the co-arbitrators on 5 June 2002, respectively on 17 June 2002.

According to Section 24 sub. 3 of the DIS Arbitration Rules, the Chairman henceforth presides over the proceedings.

The provisional advance on costs of the arbitral tribunal has been transmitted to the Chairman's account on this same date.

Kindly inform us immediately of any change in the amount in dispute in order that the DIS administrative fee may be amended accordingly and the final amount be taken into consideration for the purpose of the decision on the costs.

According to Section 36 sub. 2 of the DIS Arbitration Rules, the arbitral award is to be delivered to the parties by the DIS Secretariat.

We therefore request you to provide the DIS with a sufficient number of originals of the arbitral award in due time in accordance with Section 36 sub. 1 of the DIS Arbitration Rules.

Yours sincerely,

Jens Bredow
Secretary General

cc: Mr. Joseph Langweiler, Oceanside, Equatoriana
Dr. Herbert Comstock, Capitol City, Mediterraneo

Dr. Herbert Comstock
146 Court Street
Capitol City, Mediterraneo

7 August 2002

Mr. ...
(CHAIRMAN OF ARBITRAL TRIBUNAL)
723 Advocacy Avenue
Vindobona
Danubia

Dr. ...
(ARBITRATOR NOMINATED BY CLAIMANT)
423 River Street
Riverside
Equatoriana

Mr.
(ARBITRATOR NOMINATED BY RESPONDENT)
(ADDRESS)

Arbitral proceedings
EQUAFILM CO./MEDIPACK S.A.
DIS-SV-B-Moot 10

Dear Mr. Bredow:

I hereby submit the statement of defense of the respondent in the referenced dispute.

Sincerely,

Herbert Comstock

Encl: Statement of defense

German Institution of Arbitration (DIS)

Arbitral proceedings
EQUAFILM CO./MEDIPACK S.A.
DIS-SV-B-Moot 10

EQUAFILM CO.
Claimant

v.

MEDIPACK S.A.
Respondent

STATEMENT OF DEFENCE

I. Parties

1. Medipack S.A. (hereafter referred to as “Medipack”) is a corporation organized under the laws of Mediterraneo. It has its principal office at 395 Industrial Place, Capitol City, Mediterraneo. The telephone number is 483-5800 and the fax number is 483-5810. Medipack is a printer and manufacturer of flexible packaging products such as large and small sachets for foodstuffs and the like.

2. Equafilm CO. (hereafter referred to as “Equafilm”) is a corporation organized under the laws of Equatoriana. It has its principal office at 214 Commercial Ave., Oceanside, Equatoriana. The telephone number is 555-1212 and the fax number is 555-1214. Equafilm is a producer of polypropylene film used for packaging food products.

II. Facts

3. As noted in the statement of claim, a period of discussions initiated by Equafilm culminated in a letter dated 7 December 2000 signed by Mr. Herbert Storck, Sales Manager of Equafilm. It was stated in the letter that, because of the amounts that Equafilm expected to sell to Medipack, Medipack would always receive their best price. The letter went on to say that the price Medipack was to receive represented an eight percent discount from Equafilm’s then current list price. (Claimant’s Exhibit No. 1) The contract of 15 December 2000 for the first installment of what Medipack expected to purchase from Equafilm implemented what had been promised in the letter. (Claimant’s Exhibit No. 2) The promised quantities of polypropylene film were delivered in conformity with the contract and paid for.

4. As indicated in the statement of claim, at the end of March 2001 Medipack received a large order for sachets to be used for a wide range of pasta sauces. Consequently, on 3 April 2001 Mr. Reginald Black telephoned to Mr. Herbert Storck to place a new order for the 1350 tons Medipack would need over the coming nine month period of time to fulfill all of its needs. After the telephone conversation Mr. Black sent Mr. Storck by telefax a confirmation of what he thought had been agreed on the telephone. The terms were to be the same as in the contract of 15

December 2000, with adjustments for the amounts, dates of shipment and the fact that Equafilm's list price had risen to \$1,900 in the meantime in line with those of the industry. (Claimant's Exhibit No. 3) Most importantly for this dispute Mr. Black thereby indicated his understanding that it had been agreed that Medipack would continue to receive the eight percent discount as provided in Mr. Storck's letter of 7 December 2000 and implemented in the contract of 15 December 2000. (Claimant's Exhibits Nos. 1 and 2)

5. The same day, 3 April 2001, Equafilm sent its own confirmation form in which the price set forth was \$2,615,809, i.e., Equafilm's then current list price of \$1,900 less four percent plus CIF charges. (Claimant's Exhibit No. 4)

6. The remainder of the relevant correspondence was as set forth in the statement of claim. When Mr. Black received the confirmation form on 6 April 2001, he replied by telefax to Mr. Storck that the price should have reflected an eight percent discount. (Claimant's Exhibit No. 5) Mr. Storck in turn replied by telefax on 9 April 2001 that the eight percent discount from Equafilm's list price had been granted for the first purchase by Medipack, but that it had never been intended by Equafilm that such a discount would apply to all future orders. (Claimant's Exhibit No. 6)

7. Mr. Black replied by telefax on 10 April 2001 that Medipack had considered purchasing its requirements of film from Equafilm only because Equafilm had agreed to give Medipack an eight percent discount on its purchases. Unless Equafilm gave Medipack an eight percent discount from list, it would have to consider seriously returning to its previous supplier for its future requirements of polypropylene film. He requested Mr. Storck to reply immediately. (Claimant's Exhibit No. 7)

8. Mr. Storck replied on 12 April 2001 repeating that the discount granted in the contract of 15 December 2000 had been a one-time discount to encourage Medipack to initiate purchasing from Equafilm. (Claimant's Exhibit No. 8)

9. As a result of Equafilm's disavowal of its earlier commitment to grant Medipack an eight percent discount from list, Medipack realized that it did not have a contract for the 1,350 tons of film that it needed and that it did not make sense to negotiate with Equafilm further. As a consequence it purchased the necessary quantities from its former supplier, Polyfilm GmbH. It so informed Medipack on 2 May 2001. (Claimant's Exhibit No. 10)

III. Lack of jurisdiction of the arbitral tribunal

10. The arbitral tribunal has no jurisdiction in this dispute for two reasons:

- The arbitration clause in the contract of 15 December 2000 refers to the rules of a non-existing arbitral institution:
- No contract was concluded between Equafilm and Medipack for the sale of the 1,350 tons of polypropylene film, and perforce no arbitration agreement relating to that contract was concluded between them.

11. The arbitration clause in the contract of 15 December 2000 provides for arbitration under the rules of the German Arbitration Association. That organization does not exist, as is admitted by Equafilm in the statement of claim, para. 15. Equafilm claims that the name "German Arbitration Association" was simply a mistranslation of Deutsche Institution für Schiedsgerichtsbarkeit e. V. and that it was that organization that was intended. If Equafilm intended to refer to the rules of DIS when preparing the contract of 15 December 2000, they certainly would have used the

official English name of the organization, German Institution of Arbitration (DIS). That they did not do so indicates clearly that it was not intended. Since there was no effective agreement to arbitrate, the arbitral tribunal constituted by the German Institution of Arbitration (DIS) has no jurisdiction.

12. When Mr. Black and Mr. Storck discussed the possibility of a further purchase of 1,350 tons of polypropylene film on the telephone of 3 April 2001, and when Mr. Black sent his telefax of the same date (Claimant's Exhibit No. 3), it was anticipated that a contract would be concluded on the same terms as those in the contract of 15 December 2000, except for the amount of film to be purchased, the increase in the list price and the shipping dates. If the contract had been concluded, the arbitration clause would have been included, for whatever it was worth. However, it is evident that there was no agreement on an essential term, namely the price. This will be discussed further below. Since no contract was concluded between Mr. Black and Mr. Storck, representing Medipack and Equafilm respectively, there was no agreement on an arbitration clause.

13. Although Medipack contests the applicability to this dispute of the clause contained in section 13 of the contract of 15 December 2000, it is willing to have a tribunal of three persons consider its assertion that there is no jurisdiction and for the tribunal to meet in Vindobona, Danubia.

IV. Applicable law

14. The law applicable to the formation of the alleged contract of sale, as well as to the substance of any contract that might have been concluded, is the domestic law of Equatoriana. The contract of 15 December 2000, prepared by Equafilm, provided that it was "subject to the commercial law of Equatoriana". (Claimant's Exhibit No. 2) The wording of that provision indicates clearly that it was intended to designate the domestic law of Equatoriana and not the United Nations Convention on Contracts for the International Sale of Goods.

15. It is also clear from the communications between Mr. Black and Mr. Storck following the telephone conversation of 3 April 2002 that it was anticipated that any contract that might be concluded would be subject to the same law as was the contract of 15 December 2000. (Claimant's Exhibit No. 3 and 4)

16. This is significant because the law governing the formation of contracts in Equatoriana, the law desired by the claimant, Equafilm, is very strict in its requirement that the quantity and the price of the goods that are the subject of an alleged contract of sale must be clearly determined or determinable at the time of the formation of the contract. The fact that there was a dispute as to whether the price of the polypropylene film that is the subject of this arbitration was to be calculated at a discount of four percent or eight percent from Equafilm's list price precludes the conclusion of a contract under the domestic law of Equatoriana.

V. No contract of sale was concluded between Equafilm and Medipack

17. It has already been pointed out that under the domestic law of Equatoriana no contract of sale could be considered to have been concluded because of the extremely strict requirement that the quantity and the price of the goods be clearly determinable at the time of the conclusion of the contract. The same result is to be reached under the United Nations Convention on Contracts for the International Sale of Goods. Article 14 provides:

“(1) A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price.”

18. Since neither the telephone conversation between Mr. Black and Mr. Storck nor the subsequent exchange of telefaxes made it clear what the price would be or how it would be determined, there was no contract of sale under Article 14 of the Convention.

VI. Damages

19. On the assumption that there was a contract of sale and that Medipack was in default in its obligations under the contract, Medipack denies that Equafilm would be due by way of damages lost profit in the amount of \$575,477.98.

20. Medipack denies that any interest would be payable on any damages that might be assessed against it either prior to the date of award or subsequent to that date until the date on which the award would be satisfied. Furthermore, any interest that would be awarded should not be at the commercial rate in Equatoriana.

VII. Conclusion

21. Medipack requests the tribunal to declare:

- it has no jurisdiction to consider the dispute between Equafilm Co. and Medipack S.A.

22. As a subsidiary argument and only if the tribunal finds that it has jurisdiction to consider the dispute, Medipack requests the tribunal to:

- declare as a preliminary matter that the domestic law of Equatoriana governs the formation of any contract of sale alleged to have been concluded based on the terms found in the contract of 15 December 2000;
- find that no contract of sale was concluded between Equafilm and Medipack based on the telephone conversation of 3 April 2001 between Mr. Herbert Storck of Equafilm and Mr. Reginald Black of Medipack or their subsequent correspondence;
- find that no damages by way of lost profit are due to Equafilm;
- find that the calculation of lost profits in the amount of \$575,477.98 has not been adequately demonstrated;
- find that no interest, whether pre- or post-award, would be due on any amount awarded as damages;
- award the costs of arbitration, including attorneys' fees, to Medipack.

(Signed)

Counsel for Medipack S.A.

7 August 2002

Dr. [*Claimant nominated arbitrator*]
423 River St.
Riverside, Equatoriana

22 August 2002

Mr. Jens Bredow
Secretary General
German Institution of Arbitration (DIS)
Beethovenstr. 5 – 13
D-50674 Cologne, Germany

Arbitral proceedings
EQUAFILM CO./MEDIPACK S.A.
DIS-SV-B-Moot 10

Dear Mr. Bredow:

I wish to inform you of the following developments. The law firm with which I am associated has entered into an agreement to merge with the well-known international law firm of Multiland Associates effective 1 January 2003. The office of the firm in Faraway City, Oceania, has represented Equafilm Co. in several matters unrelated to the dispute in this arbitration.

I bring this matter to your attention because I was nominated as arbitrator by the claimant, Equafilm Co., and the arbitration will not have been completed at the time of the merger.

Nevertheless, I consider that the merger of the law firms will in any way affect my impartiality and independence as an arbitrator in the arbitration. Therefore, I do not see any reason why I should withdraw as arbitrator.

Sincerely,
(Signed)

Dr.

Cc: Joseph Langweiler
Dr. Herbert Comstock
..... [Respondent nominated arbitrator]
..... [Chairman]

Mr. Joseph Langweiler
Lawyer
14 Capitol Boulevard
Oceanside
Equatoriana

Dr. Herbert Comstock
146 Court Street
Capitol City
Mediterraneo

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INSTITUTION FÜR
SCHIEDSGERICHTSBARKEIT EV
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GERMAN INSTITUTION
OF ARBITRATION

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Cologne, 22 August 2002

Arbitral Proceedings
EQUAFILM Co. ./ MEDIPACK S.A.
DIS-SV-B-Moot 10

Dear Sirs,

Enclosed please find the notification of Dr. ... (ARBITRATOR NOMINATED BY CLAIMANT) dated 22 August 2002, received by us today by telefax.

You are herewith given an opportunity to comment on the statement of Dr. ... until

2 September 2002.

Yours sincerely

Jens Bredow
Secretary General

cc: Mr. ..., Chairman, Vindobona, Danubia
Dr. ..., Co-arbitrator, Riverside, Equatoriana
Mr. ..., Co-arbitrator,

Encs.: Notification of Dr. ... dated 22 August 2002

Dr. Herbert Comstock
146 Court Street
Capitol City, Mediterraneo

2 September 2002

Mr. Jens Bredow
Secretary General
German Institution of Arbitration (DIS)
Beethovenstr. 5 – 13
D-50674 Cologne, Germany

Arbitral proceedings
EQUAFILM CO./MEDIPACK S.A.
DIS-SV-B-Moot 10

Dear Mr. Bredow:

Dr. has shown great sensitivity to the need that there be no doubts of the impartiality and independence of every arbitrator by informing all interested parties of the impending merger of his law firm with Multiland Associates, effective 1 January 2003.

As he pointed out in his letter, the claimant, Equafilm Co., nominated him and Multiland Associates has represented Equafilm in several matters. Although we have no doubt of Dr.'s personal integrity, his participation in the law firm, Multiland Associates, during a period when he was acting as arbitrator in a matter involving a client of the firm would raise justifiable doubts as to whether he would be able to continue to be impartial and independent.

Therefore, with all due respect, we request that you suggest to Dr. that he withdraw as arbitrator in this arbitration.

Sincerely,

(Signed)

Cc: Joseph Langweiler
Dr. [Claimant nominated arbitrator]
..... [Respondent nominated arbitrator]
..... [Chairman]

Mr. Joseph Langweiler
Lawyer
14 Capitol Boulevard
Oceanside
Equatoriana

Dr.
(ARBITRATOR NOMINATED BY CLAIMANT)
423 River Street
Riverside
Equatoriana

DEUTSCHE DIS
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Cologne, 2 September 2002

Arbitral Proceedings
EQUAFILM Co. ./ MEDIPACK S.A.
DIS-SV-B-Moot 10

Dear Sirs,

Attached please find the statement of Counsel for the respondent, Dr. Comstock, dated 2 September 2002, received by us today by telefax.

Pursuant to Section 18 sub. 2 of the DIS Arbitration Rules, you are herewith given an opportunity to comment on the statement of Dr. Comstock until

9 September 2002.

Yours sincerely

Jens Bredow
Secretary General

cc: Mr. ..., Chairman, Vindobona, Danubia
Mr. ..., Co-arbitrator,
Dr. Herbert Comstock, Capitol City, Mediterraneo

Encs.: Statement by Dr. Comstock dated 2 September 2002

Dr. [*Claimant nominated arbitrator*]
423 River St.
Riverside, Equatoriana

9 September 2002

Mr. Jens Bredow
Secretary General
German Institution of Arbitration (DIS)
Beethovenstr. 5 – 13
D-50674 Cologne, Germany

Arbitral proceedings
EQUAFILM CO./MEDIPACK S.A.
DIS-SV-B-Moot 10

Dear Mr. Bredow:

Thank you for your letter of 2 September 2002 forwarding the letter of Dr. Comstock dated 2 September 2002. Dr. Comstock had copied to me his letter to you, so I was prepared for your request that I submit my comments on his request that I resign as arbitrator in the referenced arbitration.

I have considered the matter again carefully, but I see no reason why I should resign. As noted in my letter of 22 August 2002 it was the Faraway City, Oceania office of Multiland Associates that has represented Equafilm Co. There are no expectations that the Riverside, Equatoriana office will represent them in the future.

Since I do not believe that this development gives rise to any justifiable doubts as to my impartiality and independence in the arbitration between Equafilm Co. and Medipack S.A., I have decided not to resign as arbitrator.

Sincerely,

(Signed)

Dr. Herbert Comstock
146 Court Street
Capitol City
Mediterraneo

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BERLIN - KÖLN

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Cologne, 10 September 2002

Arbitral Proceedings
EQUAFILM Co. ./ MEDIPACK S.A.
DIS-SV-B-Moot 10

Dear Dr. Comstock,

Further to your brief of 2 September, notifying us of your challenge of Dr. ..., (ARBITRATOR NOMINATED BY CLAIMANT), please find enclosed a copy of the statement of Dr. ..., dated 9 September 2002.

Having regard to the fact that Claimant has not expressed concurrence with the challenge within the set time-limit and that Dr. ... has not withdrawn from office, we expressly wish to draw your attention to the provisions of Section 18 sub. 2, sentence 3 of the DIS Arbitration Rules.

Yours sincerely,

Jens Bredow
Secretary General

Enc. Statement by Dr. ... (ARBITRATOR/CLAIM.) dated 9 September 2002

cc.: Mr. ..., Vindobona, Danubia (CHAIRMAN)
Dr. ..., Riverside, Equatoriana (ARBITRATOR/CLAIM.)
Mr. ..., (ARBITRATOR/RESP.)
Mr. Joseph Langweiler, Oceanside, Equatoriana

Dr. Herbert Comstock
146 Court Street
Capitol City, Mediterraneo

19 September 2002

Mr.
Chairman, Arbitral Tribunal
723 Advocacy Avenue
Vindobona, Danubia

Arbitral proceedings
EQUAFILM CO./MEDIPACK S.A.
DIS-SV-B-Moot 10

Dear Mr.:

You have received a copy of the letter dated 22 August 2002 from Dr. ..., in which he informed Mr. Bredow of the impending merger of the law firm with which he is currently associated with Multiland Associates, effective 1 January 2003. In that letter he also informed Mr. Bredow that the Faraway City, Oceania office of Multiland Associates has represented Equafilm Co. in various matters. Nevertheless, Dr. did not believe that this fact raised any doubts as to whether he could remain impartial and independent as arbitrator in the arbitration pending between Equafilm Co. and Medipack S.A.

You have also received a copy of my letter to Mr. Bredow of 2 September 2002 in which I suggested that Dr. resign as arbitrator. Since he has indicated that he did not intend to resign, it is with great regret that I must challenge Mr. in accordance with the provisions of Section 18 of the arbitration rules of the German Institution of Arbitration (DIS).

Our challenge of Dr. is without prejudice to our assertion that the arbitral tribunal does not have jurisdiction in this dispute.

Sincerely,

(Signed)

German Institution of Arbitration (DIS)

Arbitral proceedings
EQUAFILM CO./MEDIPACK S.A.
DIS-SV-B-Moot 10

EQUAFILM CO.
Claimant

v.

MEDIPACK S.A.
Respondent

Procedural Order No. 1

1. The Arbitral Tribunal, composed of Mr. _____, Dr. _____, and myself as chairman, has authorized me in conformity with the Arbitration Rules of the German Institution of Arbitration (DIS), Section 24.4, to make procedural rulings alone.
2. On 3 October 2002 I met with _____, counsel for the Claimant, Equafilm Co., and _____, counsel for the Respondent, Medipack S.A. We discussed the procedures that should be followed in the arbitration. Because of the special nature of this Moot arbitration it was agreed that the challenge to Dr. _____ as arbitrator, the contest as to the jurisdiction of the arbitral tribunal and the substantive claim of Equafilm Co., three matters in which the parties would normally submit separate memoranda substantiating their positions and that would be considered in separate hearings, will be considered together.
3. Counsel agreed that the Tribunal might be able to decide the arbitration on legal issues alone, without the need for an extensive procedure to determine facts beyond those already set forth in the Statement of Claim and the Statement of Defense. The factual issues that may need to be developed at this first stage of the arbitration will be determined in accordance with the procedures found in the Rules of the Tenth Annual Willem C. Vis International Commercial Arbitration Moot. In accordance with those Rules questions may be submitted to Professor Eric Bergsten, preferably by e-mail at eric.bergsten@chello.at, by Friday, 25 October 2002. The answers will be distributed to all parties by 4 November 2002.
4. Medipack S.A has challenged Dr. _____ to serve as a member of the arbitral tribunal on the grounds that his law firm will merge with Multiland Associates, effective 1 January 2003. The Faraway City, Oceania office of Multiland Associates has represented Equafilm Co. in various matters. Dr. _____ has indicated that he does not believe that the fact that an office in another country of the law firm with which he will be associated will raise any reasonable doubts as to his impartiality or independence. In accordance with Section 18.3 of the DIS Arbitration Rules, the arbitral tribunal itself will decide the challenge. Dr. _____ will participate in the decision on the challenge as a member of the tribunal.
5. Medipack S.A. has also raised a challenge to the jurisdiction of the arbitral tribunal. One ground asserted by Medipack is that section 13 of the contract of 15 December 2000, which Equafilm Co. asserts provides the written form of the arbitration agreement, stated that the

arbitration should take place under the rules of the German Arbitration Association, an entity that does not exist. Medipack has asserted that the consequence is that there was no effective arbitration clause in the contract of 15 December 2000 and, as a consequence, that there is no effective arbitration agreement in regard to the current dispute. Equafilm suggests that the reference to the German Arbitration Association was simply a mistranslation of the name of the German name of the institution, i.e., Deutsche Institution für Schiedsgerichtsbarkeit e.V.

6. A second argument asserted by Medipack as to why the arbitral tribunal has no jurisdiction in this dispute is that the Equafilm and Medipack never reached agreement on the terms of a contract during the telephone conversation between Mr. Herbert Storck, Sales Manager of Equafilm and Mr. Reginald Black, Purchasing Manager of Medipack on 3 April 2001 or in the subsequent correspondence. This ground for contesting the jurisdiction of the arbitral tribunal is closely associated with the merits of the claim, and defense to the claim, on the merits.

7. When turning to the substance of the dispute, it is necessary first to consider the law applicable to the substance of the dispute. There is agreement that it is the law of Equatoriana, either because of the choice of law clause in the contract of 15 December 2000, incorporated by reference, or because both Equatoriana and Mediterraneo recognize the law of the seller as that applicable to a contract of sale and its formation. While Equafilm claims that the United Nations Convention on Contracts for the International Sale of Goods governs this dispute as that portion of the law in Equatoriana that governs international sales of goods, Mediterraneo asserts that the choice of law clause refers to the “commercial law of Equatoriana”. Medipack asserts that the reference to the “commercial law” is a clear indication that the domestic law of Equatoriana was intended and not the Convention.

8. If the domestic law of Equatoriana applies, Medipack asserts, and Equafilm does not deny, that no contract would have been formed because Equatoriana has a strict rule that the price, as well as the quantity of the goods, must be clear at the conclusion of the contract. The fact of a dispute as to the price is almost conclusive that no contract was formed by the exchange of offer and acceptance.

9. If the Convention applies, there is still a question as to whether a contract was concluded during the telephone conversation between Mr. Storck and Mr. Black or in the subsequent correspondence, given the fact that Medipack alleges that there was no agreement on the price.

10. If a contract was concluded, it will be necessary to determine the price of the polypropylene film, i.e., whether a discount of four percent or eight percent from Equafilm’s list price had been agreed upon.

11. Medipack has stated that the alleged damages have been calculated incorrectly, but no details have been given. It may become necessary later in the arbitration [that is, after the Moot is over] for Equafilm to give evidence of how it calculated a gross margin of 22 percent. However, the parties are agreed that at the present stage of the arbitration the gross margin of 22 percent can be taken as a given. Nevertheless, the question of the amount of damages must be determined.

12. Finally, Equafilm has requested that both pre- and post-award interest be calculated on the damages. Medipack has resisted that request.

13. There was agreement that at this stage of the arbitration there should be no discussion of the rate of interest that should be applied, if any, or of the allocation of the costs of the arbitration.

14. A memorandum for claimant in regard to

- the challenge to Dr.;
- the challenge to the jurisdiction of the tribunal
- whether the domestic law of Equatoriana or the United Nations Convention on Contracts for the International Sale of Goods is applicable to the alleged contract and its formation;
- if the Convention is applicable, whether a contract of sale was concluded during the telephone conversation between Mr. Herbert Storck and Mr. Reginald on 3 April 2001;
- if a contract of sale was concluded, whether the price included a four percent or an eight percent discount;
- if there was a contract of sale, whether Medipack S.A. was in breach of its obligations under the contract;
- if Medipack was in breach of its obligations under the contract, the amount of damages;
- if Medipack was in breach of its obligations under the contract, whether interest should be charged and the beginning and ending dates of any such interest (but not the rate of interest or the method of determining that rate)

is to be submitted by e-mail to Professor Eric Bergsten by 12 December 2002. Twenty hard copies must also be submitted, of which at least five must be received in Vienna by 17 December 2002. Any copies not sent to arrive in December must be sent to arrive by 10 January 2003. Counsel are reminded that they may need to send the hard copies before 12 December in order for them to arrive by 17 December. Counsel are also reminded that failures of the delivery service, including the sender's Internet Service Provider, the post or a courier service, are at their risk.

15. A memorandum for respondent is to be submitted by e-mail to Professor Eric Bergsten by 7 February 2003. A minimum of five hard copies must be received in Vienna by 12 February 2003 with the balance of the twenty copies due by 18 February 2003.

16. Oral arguments will be held during the period 11 to 17 April 2003. There will be a welcoming party organized by the Moot Alumni Association on Thursday evening, 10 April 2003, to which all counsel and their advisors will be invited.

(Signed)

4 October 2002