INTERNATIONAL CHAMBER OF COMMERCE
INTERNATIONAL COURT OF ARBITRATION

---x

[redacted],

Claimant,

- against -

REQUEST FOR ARBITRATION

[redacted],

Respondent.

---x

This Request for Arbitration, made by the above-referenced Claimant, [redacted]., shows and states as follows:

A. *The Parties, and the Basis for Jurisdiction*

1. Claimant is and at all relevant times was a corporation organized and existing under the laws of Turkey, with offices located at [redacted] Istanbul, Turkey. Claimant is one of Turkey's largest producers and exporters of steel bars and high alloy steels.

2. Upon information and belief, Respondent, [redacted], is and at all relevant times was a corporation organized and existing under the laws of the State of New Jersey, USA, with offices located at [redacted], and with business agents and/or affiliates in New York City and Istanbul, Turkey. Upon information and belief, Respondent is an international distributor of steel products, with special focus on U.S. and African markets.

B. ***The Nature and Circumstances of the Subject Dispute***

3. Claimant, as seller, and Respondent, as purchaser, entered into a written Sales/Purchase Contract (No. UY-C-180908), dated September 18, 2008 (the "Contract"), which was amended by Addendum #1, dated September 22, 2008 (the "Addendum").[1] Among other things, the Contract, as amended, provided for (a) Respondent's purchase from Claimant of a specified amount of prime newly-produced deformed reinforcing steel bars for concrete purposes (hereinafter referred to as the "Cargo"), (b) shipment of the Cargo from Turkey to the United States on or before October 15, 2008, and (c) payment in U.S. dollars, CFR FO COD, duty paid Wilmington, Delaware, USA, in accordance with Incoterms 2000. The Contract also provided that payment was to be arranged via an irrevocable and confirmed documentary Letter of Credit (hereinafter referred to as the "Letter of Credit"), 100% payable at sight, which was to be applied for by Respondent on or before September 19, 2008, for issuance to Fortis Bank A.S., Merkez Branch ("Fortis Bank"), with Claimant as beneficiary.

4. Respondent made timely application for issuance of the Letter of Credit, and Claimant timely fulfilled its responsibility to arrange for shipment, with the Cargo loading onto M/V "Supertramp" on or before October 15, 2008. On October 16, 2008, Claimant duly furnished necessary documentation required by the Letter of Credit (the "Documents") to the issuing bank, BNP Paribas (Suisse) SA ("Bank Paribas"). wrong date

5. On or about October 20, 2008 (with the Cargo en route from Turkey to the United States), BNP Paribas for the first time raised an objection to part of the Documents, alleging certain non-material discrepancies with the technical requirements in the Letter of Credit.

[1] Copies of the Contract and the Addendum are annexed hereto as Exhibit A.

6. Claimant did not learn of that technical objection to the Documents until October 27, 2008, whereupon Claimant cured the cited discrepancies and resubmitted the Documents to BNP Paribas. However, the Letter of Credit had, by its terms, expired on October 25, 2008.

7. On or about November 5, 2008, following arrival of the vessel containing the Cargo in the Port of Wilmington, Delaware, USA, BNP Paribas, based on instructions it had received from Respondent, offered to accept the Documents only in exchange for Claimant's agreement to accept a drastically reduced purchase price for the Cargo.

8. In truth, during the approximately one-month period between the parties' execution of the Contract and Addendum and the date that the Cargo was loaded onto M/V "Supertramp" for shipment, world-wide market prices for product such as that included in the Cargo had declined sharply. Although Respondent had no right under the Contract, or under applicable law, to demand any reduction to the purchase price, it did so, through BNP Paribas, in an effort to avoid the consequences of the market decline.

9. Claimant did not respond to the request for a reduction in the purchase price, and Respondent, in breach of the Contract, refused to take delivery of the Cargo at the discharge port, notwithstanding the fact that the relevant characteristics of the Cargo fully complied with the terms of the Contract, as amended.

10. By letter dated November 6, 2008, transmitted via fax to Respondent's New Jersey and New York offices, Claimant confirmed that the vessel containing the Cargo had arrived and berthed at the Port of Wilmington, Delaware, USA, ready to discharge, and Claimant objected to Respondent's having used the allegation of "minor discrepancies" in the Letter of

Credit as a pretextual excuse to refuse to discharge or to take delivery of the Cargo.[2] This excuse was wholly unacceptable, a well as a breach of the Contract, inasmuch as the issuance or non-issuance of the Letter of Credit was solely a function of the manner in which Claimant was to be paid. Paragraph 11.00 of the Contract gave Claimant the right to cancel the Contract in the event that the Letter of Credit was not issued, but Respondent was given no such right, and the non-issuance of the Letter of Credit did not relieve Respondent of its obligation to pay to Claimant the agreed-upon purchase price.

11. As a result of Respondent's breach of the Contract, Claimant had to find an alternative buyer for the Cargo, and Claimant ultimately sold the Cargo at a loss relative to the purchase price set forth in the Contract, as amended, in the sum of $891,065.88.

C. *Number of Arbitrators, Place of Arbitration, Applicable Rules of Law and Language of Arbitration*

12. Paragraph 14.11 of the Contract provided that all disputes between the parties, other than those involving cargo loss or damage, were "to be arbitrated by an arbitration court located in New York" and to be governed by New York law.

13. Notwithstanding that reference to "an arbitration court located in New York," there was no designation in the Contract of a specific arbitration forum. Following a failure by the parties, each acting through counsel, to agree upon such a forum, the matter was submitted by Claimant to the United States District Court for the Southern District of New York, which, by Order dated November 16, 2010, and Judgment dated November 17, 2010, appointed the ICC's International Court of Arbitration as the arbitration court for resolution of this dispute.[3]

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[2] Copies of the letter to each of those offices, with the corresponding fax coversheet transmitted to each office, are annexed hereto as Exhibit B.

[3] Copies of the District Court's Order and Judgment are annexed hereto as Exhibit C.

14. For the reasons set forth above, Claimant respectfully requests that (a) this arbitration proceeding be conducted before a single arbitrator of the ICC's International Court of Arbitration, (b) the arbitration be held in New York, NY, U.S.A., at the offices of Claimant's attorneys, (c) the arbitration be conducted in English, and (d) the dispute be resolved in accordance with New York law.

D. ***Relief Sought***

E. Claimant seeks an award of monetary damages in its favor and against Respondent in the amount of $891,065.88, together with interests and the costs of the arbitration incurred by Claimant.

Dated: New York, New York
March 18, 2010

[redacted]

By: ______________________
[redacted]

[redacted]
New York, NY 10018
[redacted]

EXHIBIT A

September 18, 2008

SALES/PURCHASE CONTRACT (No: UY-C-180908)

"[redacted]" of Istanbul / Turkey agrees to sell, and "[redacted]" of USA , agrees to buy, the following material in accordance with the following terms and conditions, and subject to unforeseen circumstances ;

1.00 **MATERIAL**
Prime newly produced deformed reinforcing steel bars for concrete purposes.
Tempcore or any other form of water quenching is not permitted.

2.00 **QUALITY**
According to to ASTM A615 Grade 40 & Grade 60

3.00 **QUANTITY**
2.603 MT (+0/-10% at seller's option)

4.00 **SIZE BREAKDOWN**

Size	Quantity (mt)
#3 x 20 x 40	189
#3 x 20 x 60	190
#3 x 40 x 40	22
#3 x 40 x 60	25
#4 x 20 x 40	338
#4 x 20 x 60	799
#4x 40 x 60	69
#5 x 20 x 40	25
#5 x 20 x 60	576
#5 x 40 x 60	69
#6 x 20 x 60	174
#6 x 40 x 60	25
#7 x 20 x 60	30
#7 x 40 x 60	22
#8 x 20 x 60	50
	2603

* #3 of rebar will be produced from debar in coils.

5.00 **LENGTH**
20 feet (+4"/-0")
40 feet (+4"/-0")

6.00 **DELIVERY ALLOWANCE**
+0/- 10 %pct at seller's option

7.00 **ORIGIN**
ICDAS-Turkey

8.00 **PACKING**
Bundles in 40' lengths a minimum 6 spots with 3 lifting hooks and for 20' lengths a minimum of 4 spots with 2 lifting hooks.

9.00 **MARKING**
Two metal and/or plastic tags to be attached to each bundle/coil indicating:
Quality/Grade, Size, Theoretical Weight, Number of Pieces, Destination, Mill's Name, and Heat No , Origin, Lot No
Rolled in marks on each bar are to be per ASTM A615
Mill Mark – "IC"
Bar Size Number – e.g. "3" for 3/8" , "4" for 4/8" etc.
Produced from billet steel mark – Grade "60"
Country of origin – "Turkey" (this must be spelled in full)
"S"

9.00 **SHIPMENT**
Latest by October 15, 2008

10.00 **PRICE**
810 USD/mts CFR FO COD Duty Paid Wilmington, Delaware , USA, according to Incoterms 2000.

11.00 **PAYMENT**
Irrevocable and confirmed documentary Letter of Credit, 100 pct payable at sight, to be issued to the following bank:

FORTIS BANK A.S
MERKEZ BRANCH
SWIFT CODE: DISBTRIS

The Letter of Credit of which the terms and conditions accepted fully by the Seller is to be issued by the buyer until 19 September, 2008. If the buyer fails to issue the Letter of Credit until 19 September, 2008 the Seller has the right to cancel the contract.

12.00 **DOCUMENTS**

12.01 Original Beneficiary's Commercial Invoice in one original and two copies showing the total quantity of prime newly rolled deformed concrete reinforcing bars.

12.02 3/3 original shipped on board under deck charter party Bills of Lading , marked freight prepaid plus three non-negotiable copies briefly describing goods loaded on board vessel. Bills of Lading with notation "atmospherical rust" are acceptable.

12.03 Packing list in one original and two copies issued by the manufacturer indicating brief description of goods, theoretical weight, number of pieces per bundle and number of bundles per size, grade and total quantity.

12.04 Mill's Certificate in one original and two copies issued by the manufacturer showing chemical analysis and physical properties per heat.

12.05 Shipper's certificate of dunnage stating that the materials used for this shipment are totally free from bark and life infestation . All wooden dunnage to comply with the final rule of the US Dept. of Agriculture as published in the federal register, volume 69 , No. 179 , 16/09/04

12.06 Certificate from vessel's owner /master/carrier or their agent attesting vessel's age.

12.07 Inspection certificate issued by independent inspection agency showing cargo description and quantity of goods shipped, color codes, packing, destination, control of quantity and control of quality.

12.08 Certificate of Origin in one original and two copies issued by the local Chamber of Commerce, stating that the goods are of Turkish origin.

13.00 SHIPPING TERMS

13.01 SHIP : The seller to charter a suitable vessel and furnish the buyer with all relevant ship's characteristics including year built, class, type, hold/hatch dimensions, gear/crane capacity.The ship must be nominated 5 days prior to the commencement of the loading operations. Performing vessel to be a bulkcarrier or singledeker or tweendecker, maximum 25 years old with 20 mt cranes in good working order.

13.02 CERTIFICATES : The ship's cargo must comply with all Regulations in force at the ports of discharge.The vessel to be in possession of all necessary certificates to comply with the regulations at discharge port including ISM and ISPS code , as well as international classification and insurance standarts. Vessel should be IACS classed.

13.03 DISCHARGING PORT NOTICE : Upon the ship's departure from loadport, the Sellers should inform buyers via fax or e-mail about the b/l quantity and submit weekly discharging approx. eta dates and 5 / 3 / 2 / 1 final eta notices.

13.04 BERTH/CHARGES : The discharging berth will be Houston or Nola.In case of Nola dicharge;

-Discharge 1safe berth or safe anchorage, Miss River, not north of mile point 111 in Aceminor's option.

- Rebars will be discharged direct from ship to barge.

- Rebars to be block stowed by bill of lading / lot on board the ship so that each bill Of lading can be discharged direct to a single barge without having to bring barges back and forth to the ship. A bill of lading should not be split between separate holds or separate areas of the same hold.

13.05 HATCHES : The opening and closing of hatches and the rigging of the cargo gear shall always be done in the Seller's time and for his account provided same is permitted by the local regulations.

13.06 RESPONSIBILITY : The stevedores , although appointed and paid for the buyers are to be considered the ship owner's servants and shall discharge the cargo in accordance with the Master's instructions , directions and under his responsibility. Stevedore damage, if any, at discharge to be settled directly between owners and stevedores, with buyers to lend all possible assistance Buyers to remain ultimately responsible for any stevedore damage at discharge (unless arising from the negligence of master or crew or unseaworthines of vessel or unfitness of vessel for the subject cargo), provided master has notified stevedores and buyers in writing of any such damage and prior to sailing. In default of notification, any such claim of the owners is deemed to be null and void and to have been absolutely waived.

13.07 Discharge CQD basis.

13.08 DETENTION :

If discharging operations cannot be commenced and/or are delayed for one or more of the following reasons, the seller is entitled to charge the buyers with detention at the rate indicated in the relevant charter party.

A) If import procedures of the cargo at discharging port haven't been completed on the arrival of the vessel, and the vessel is prevented to berth and commence cargo operations on her arrival. If original documents required by buyers' letter of credit have not been received by buyer's bank 5 calendar days prior to vessel's arrival in Houston, this clause will not be operable.

B) If the buyers wish to take the delivery of the goods directly to trucks and/or railway wagons and/or barges, and discharging operations are delayed and/or waiting time occurs due to shortage or delay of trucks/wagons/barges.

Detention payment : If any; to be settled within 10 days upon receipt of SOF/NOR duly signed by master and the calculation statement , even by fax or e-mail.

13.09 Arbitration related with shipping terms, if any/necessary, to be held in London according to English law.

13.10 The buyers will discharge the cargo basis customary quick dispatch terms.

13.11 General Paramount Clause which refers to Hague-Visby rules to be incorporated with the relative charter party.

13.12 Vessel owners to be responsible for the number of bundles loaded as shown on the bills of lading. Stowage to be done under master's responsibility, supervision, and to his satisfaction as owners' agent.

13.13 Cargo receivers and their appointed surveyors to have free access to the vessel at ports of loading and discharge in order to survey the cargo.

13.14 Dunnage removal and disposal for owner's account.

14.00 SPECIAL CONDITIONS

14.01 All banking charges outside USA are to be at Seller's account.

14.02 All banking charges outside Turkey are to be at Buyer's account.

14.03 Atmospheric rust acceptable.

14.04 All documents shall be in English. (except the preprinted ready to use ones)

14.05 Invoicing on theoretical weight based on packing list and invoice .

14.06 The force majeure clause of ICC Publication No.650 is hereby incorporated in this contract.

14.07 Partial shipment not allowed.

14.08 Quality to be final at loading port according to mill's test certificate and/or an inspection report of an independent surveying company. Buyer may submit quality claims for defects which are detected by the buyer within 30 days after discharge of the vessel at the port of discharge. Such quality claims must be supported by all necessary documentation and a survey report by a well-known international inspection company such as SGS or Lloyds. Buyer shall set aside whole claimed portion of the goods for Seller's inspection. Seller has the right, at its own expense, to run a separate inspection survey by an internationally recognized survey company.

14.09 Quantity to be final at the load port according to truck weight tickets and/or an inspection report of an independent surveying company.

14.10 Charter Party B/L is acceptable. It is to be issued by the master or an authorized agent for and behalf of master

14.11 All disputes arising from or respectively in connection with this contract, except those involving cargo loss or damage, to be arbitrated by an arbitration court located in New York. No arbitration clause in this contract or seller's charter party to apply to claims for cargo loss or damage; any such claims shall be brought in the

United States District Court for the Southern District of New York, to which sellers and vessel owners consent. This contract shall be governed by New York law.

14.12 This contract should be countersigned and sent back to the customer within 48 hours after the date of the contract.

BUYER
ACEMINOR USA LLC
#6 INDUSTRIAL WAY WEST
BUILDING "A" EATONTOWN,
NEW JERSEY 07724 USA

ACEMINOR USA LLC

(Authorized Signature and Comp.Seal)

SELLER
ICDAS CELIK ENERJI TERSANE
ULASIM VE SAN. A.S.

ICDAS CELIK ENERJI TERSANE VE ULASIM

(Authorized Signature and Comp.Seal

SEPTEMBER 22,2008

ADDENDUM#1

(TO CONTRACT-UY-C-180908 DATED SEPTEMBER 18, 2008)

SELLER NAME & ADDRESS	BUYER NAME & ADDRESS
[redacted]	[redacted] LLC [redacted]

1) SIZE BREAKDOWN AMENDED TO READ AS:

Item	Length	Grade	LOT1	LOT2	LOT3	LOT4	LOT5	LOT6	TOTAL
# 3	20	40	21,772	22,680	50,000		90,718		185,170
# 3	20	60	43,545	22,650	50,000	19,958	45,359	30,000	211,542
# 3	40	40				19,958			19,958
# 3	40	60			25,000				25,000
# 4	20	40	43,545	68,039	25,000		181,437		318,021
# 4	20	60	108,862	136,078	175,000	39,916	163,293	80,000	703,149
# 4	30	60						20,000	20,000
# 4	40	60			25,000	39,916			64,916
# 5	20	40			25,000				25,000
# 5	20	60	65,317	68,039	175,000	39,916	117,934	60,000	526,206
# 5	30	60						40,000	40,000
# 5	40	60			25,000	39,916			64,916
# 6	20	60	21,772	22,680	75,000		45,359	10,000	174,811
# 6	40	60			25,000				25,000
# 7	20	60			10,000		18,144		28,144
# 7	40	60				19,958			19,958
# 8	20	60			30,000		18,144		48,144
Total			304,813	340,196	715,000	219,538	680,385	240,000	2,499,935

Item	Length	Grade	LOT7
# 3	20	60	50,000
# 4	20	40	125,000
# 4	20	60	400,000
# 5	20	60	250,000
Total			825,000

2) NEW TOTAL QUANTITY: 3 324,935MT (+0/-10 PCT)

3) <u>FROM LOT1 TO LOT6 UNIT PRICE</u> : 810 USD/ MT CFR FO COD DUTY PAID WILMINGTON, DELAWARE, USA (ACC TO INCOTERMS 2000)

<u>FOR LOT7 UNIT PRICE</u> 850 USD/ MT CFR FO, COD, DUTY PAID, WILMINGTON DELAWARE, USA (ACC TO INCOTERMS 2000)

4) NEW TOTAL AMOUNT USD 2 726 197.35 (+0/-10 PCT)

THIS ADDENDUM IS INTEGRAL PART OF THE CONTRACT AND WILL ENTER INTO FORCE FROM THE DATE OF ITS SIGNATURE BY BOTH SELLER AND BUYER

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

SELLER SIGNATURE		BUYER SIGNATURE	
PLACE:	DATE:	PLACE:	DATE: 22/9/2008
		[redacted]	

EXHIBIT B

[redacted]

[redacted]

Istanbul,06.11.2008

Vessel Name	: M/V Supertramp
Applicant	: [redacted]
Description Of goods	: Material:Prime newly produced deformed reinforcing steel bars
Total Quantity(Theoretical Weight)	: 2,475.183 in metric tons
Total Quantity(Actual Weight)	: 2,389.800 in metric tons
Total number of bundles	; 2582
Contract No & Date	:UY-C-160908 & September,16.2008

The vessel has arrived and berthed at Wilmington,Deleware to discharge your cargo. Sellers note Buyers refuse to discharge and take delivery of their cargo basis alleged minor discrepancies in LC. This is wholly unacceptable conduct and a breach of the sale contract. Delaying discharge of the vessel will mean demurrage or damages for detention.

Sellers, in order to mitigate their losses, propose to discharge the cargo into a bonded warehouse and all related costs and expenses and risk will be for Buyers' sole account. All of Sellers' rights against Buyers remains fully reserved against Buyers.

Kind regards,

[redacted] ULASIM SANAYI A.S

[redacted]

EXPORT MANAGER

[redacted]

[redacted]

Istanbul,06.11.2008

Vessel Name	: M/V Supertramp
Applicant	:[redacted]
Description Of goods	: Material:Prime newly produced deformed reinforcing steel bars
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Sellers, in order to mitigate their losses, propose to discharge the cargo into a bonded warehouse and all related costs and expenses and risk will be for Buyers' sole account. All of Sellers' rights against Buyers remains fully reserved against Buyers.

Kind regards,

[redacted]

[redacted] KARAGUL
EXPORT MANAGER

(Pet., Ex 1.) The dispute at issue does not involve cargo loss or damage, and both parties agree that the arbitration clause applies and is valid. The parties cannot agree, however, on the choice of an arbitration court, and the contract does not provide any guidance for choosing such a court. Petitioner demands arbitration of its claim before the American Arbitration Association ("AAA"). Respondent demands the claim be arbitrated before the Society of Maritime Arbitrators ("SMA") or, alternatively, the International Court of Arbitration ("ICA") established by the International Chamber of Commerce. This Court has considered carefully the papers submitted by both parties and for the following reasons appoints the ICA as the arbitration court to handle this matter.

Section 5 of Title 9 of the United States Code reads in pertinent part, "If no method be provided [in an arbitration agreement for the appoint of an arbitrator] . . ., then upon the application of either party to the controversy[,] the court shall designate and appoint an arbitrator," 9 U.S.C.A. § 5 (West 2009); see also 9 U.S.C.A. § 206 (West 2009) (stating in pertinent part that a court "may . . . appoint arbitrators in accordance with the provisions of the agreement").[1] Each of the three arbitration courts named by the parties is alleged to have expertise and experience dealing with international disputes similar to this one. See, e.g., Pet. 4; Resp't Mem. in Opp'n 4-6. There is no evidence or allegation before the Court suggesting that any of the three named arbitration courts would be incapable of handling this matter. The ICA, though, appears to be the most suitable forum. The letter of credit at issue in this case was allegedly governed by the Uniform Customs and Practice for Documentary Credits, which is a set of rules promulgated by the ICA's parent

[1] The relationship between 9 U.S.C. § 5, contained in Chapter 1 of the Federal Arbitration Act, and 9 U.S.C. 206, contained in Chapter 2 of the same act, is explained in 9 U.S.C. § 208, which states in pertinent part, "Chapter 1 applies to actions and proceedings brought under this chapter[, Chapter 2,] to the extent that chapter is not in conflict with this chapter." 9 U.S.C.A. § 208 (West 2009).

organization, the International Chamber of Commerce. See Resp't. Mem. in Opp'n 5. In addition, the contract between the parties is alleged to incorporate the international commerce terms, or "INCOTERMS," also promulgated by the International Chamber of Commerce. Id. This suggests that the ICA may have somewhat greater familiarity dealing with the letter of credit and contractual terms at issue in this matter. Even if this greater familiarity results in only a slightly more efficient resolution of the case, that is a sufficient basis for choosing the ICA where, as here, the Parties have not demonstrated a more significant distinction upon which a choice can be made. The incorporation of rules promulgated by the International Chamber of Commerce also suggests that the parties are aware of the International Chamber of Commerce and are willing to place at least some reliance in its expertise. Accordingly, the ICA is appointed as the arbitration court.

For the foregoing reasons, the Petition to Compel Arbitration is granted and the International Court of Arbitration is appointed as the arbitration court. The Clerk of the Court is respectfully requested to enter judgment accordingly and close this case.

SO ORDERED.

Dated: New York, New York
November 16, 2010

LAURA TAYLOR SWAIN
United States District Judge

FILE COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---x

[redacted]

Petitioner,

-v-

No. 10 Civ. 6934 (LTS)(GWG)

[redacted],

Respondent.

---x

ORDER

In this action, Petitioner [redacted] petitions the Court for an order compelling arbitration and appointing an arbitrator. Respondent [redacted]") removed the action to this Court from the Supreme Court of the State of New York pursuant to 9 U.S.C. § 205 and 28 U.S.C. §§ 1441 and 1446. The Court has jurisdiction of the petition pursuant to 9 U.S.C. § 203 and 28 U.S.C. § 1332.

The basic facts of this matter are contained in the Petition and/or undisputed. [redacted] contracted to sell reinforcing steel bars to [redacted] but when the shipment of steel bars arrived at port, [redacted] refused to tender payment because of an alleged failure to comply with the terms of a certain letter of credit. [redacted] then sold the steel bars to a third party at a loss and is seeking damages from [redacted]. The contract for the sale of the steel bars contains an arbitration agreement, which provides that:

> All disputes arising from or respectively in connection with this contract, except those involving cargo loss or damage, [are] to be arbitrated by an arbitration court located in New York . . . . This contract shall be governed by New York law.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: ____________
DATE FILED: 11/17/10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---X
[redacted].S.,

Petitioner,

-against-

[redacted],

Respondent.
---X

1[redacted]

JUDGMENT

Petitioner having moved to compel arbitration and to appoint an arbitrator, and the matter having been brought before the Honorable Laura T. Swain, United States District Judge, and the Court, on [redacted] having issued its Order granting the petition to Compel Arbitration and appointing the International Court of Arbitration as the arbitration court, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Order dated [redacted] the petition to Compel Arbitration is granted and the International Court of Arbitration is appointed as the arbitration court; accordingly, the case is closed.

Dated: New York, New York
[redacted]0

RUBY J. KRAJICK
Clerk of Court

BY: ____________
Deputy Clerk

THIS DOCUMENT WAS ENTERED ON THE DOCKET ON [redacted]

INTERNATIONAL CHAMBER OF COMMERCE
INTERNATIONAL COURT OF ARBITRATION
---x

[redacted],

Claimant,

- against -

[redacted]

Respondent.

---x

CLAIMANT'S MEMORANDUM OF FACTS AND LAW

[redacted]
Att[redacted]nt
1[redacted]r)
N[redacted]18
[redacted]

Of Counsel:

J[redacted]q.
[redacted]

Preliminary Statement

This proceeding arises from Respondent's breach of a written Sales/Purchase Contract between Claimant, as seller, and Respondent, as buyer. As will be more fully described below, Claimant fully complied with its contractual obligations by shipping and delivering designated cargo from Istanbul, Turkey to Wilmington, Delaware. In breach of the contract, however, Respondent refused without cause (other than an apparent downturn in the market) to take delivery. As a result, Claimant found an alternative buyer and now seeks money damages in this proceeding for the difference between the amount that Respondent was supposed to pay and the amount that the alternative buyer actually paid.

Contrary to the suggestion made by Respondent in the Terms of Reference herein, this proceeding does not include any claim for wrongful dishonor of a letter of credit that was obtained by Respondent in accordance with the parties' contract. It is well established in transactions involving the use of a letter of credit that the obligation of the issuing bank to honor drafts drawn on a letter of credit by the beneficiary (here, Claimant) is independent of the obligation of the bank's customer (here, Respondent) to the beneficiary in the underlying contract of sale. There is no merit to the contention now being made by Respondent in this proceeding that Claimant accepted a letter of credit as the exclusive mode of payment, or that Claimant somehow waived and abandoned all rights against Respondent once the letter of credit was issued. Put another way, the mere issuance of the letter of credit did not satisfy Respondent's obligation to pay Claimant for the subject cargo.

Statement of Facts

Claimant, as seller, and Respondent, as purchaser, entered into a written Sales/Purchase Contract (No. UY-C-180908), dated September 18, 2008, which was amended by Addendum #1, dated September 22, 2008 (both documents together referred to herein as the "Contract"). (EXHIBIT 1)[1] Among other things, the Contract provided for (a) Respondent's purchase from Claimant of a specified amount of prime, newly-produced, deformed reinforcing steel bars for concrete purposes (hereinafter referred to as the "Cargo"), (b) shipment of the Cargo from Turkey to the United States on or before October 15, 2008, and (c) payment to be made in U.S. dollars, CFR FO CQD, duty paid Wilmington, Delaware, in accordance with Incoterms 2000. The Contract also required Respondent to arrange for the issuance of an irrevocable and confirmed documentary Letter of Credit, 100% payable at sight, which was to be applied for by Respondent on or before September 19, 2008, for issuance to Fortis Bank A.S., Merkez Branch ("Fortis Bank"), with Claimant as beneficiary. Respondent did, in fact, arrange for the issuance of a Letter of Credit (hereinafter referred to as the "Letter of Credit") from BNP Paribas (Suisse) SA ("Bank Paribas").[2] (EXHIBIT 2)

Claimant timely fulfilled its responsibility to arrange for shipment, with the Cargo loading onto M/V "Supertramp" on or before October 15, 2008. Prior to shipment, the Cargo had

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[1] References herein to "EXHIBIT" are to the documents submitted as Claimant's exhibits accompanying this Memorandum.

[2] The Contract provided for an "Irrevocable and confirmed documentary Letter of Credit." The Letter of Credit provided that it was to be governed by the UCP latest version [600]. It is also plain from the Letter of Credit that its "confirmation" was optional and not mandatory inasmuch as it provides, "If you add your conformation to the credit, please inform us."

been inspected.[3] (EXHIBIT 3) On October 16, 2008, Claimant duly furnished the necessary documentation prescribed by the Letter of Credit (the "Documents") to the issuing bank, Bank Paribas.

On or about October 20, 2008, while the Cargo was en route from Turkey to the United States, Paribas Bank raised an issue regarding a portion of the Documents, contending that there were certain discrepancies (which, even upon a cursory review, are manifestly non-material) with the technical requirements in the Letter of Credit. (EXHIBIT 5) Claimant did not learn of that technical objection to the Documents until October 27, 2008. However, the Letter of Credit had, by its terms, expired on October 25, 2008. As a result, Paribas Bank apparently dishonored the Letter of Credit.[4]

On November 4, 2008, Respondent received notice from Claimant that the vessel containing the Cargo had arrived in the Port of Wilmington, Delaware. One day later, on November 5, Paribas Bank, based on instructions it had received from Respondent, offered to accept the Documents, but only in exchange for Claimant's agreement to renegotiate the Contract with a drastically discounted purchase price. (EXHIBIT 6) It does not appear to be a coincidence that, during the approximately one-month period between the parties' execution of the Contract and the date that the Cargo was loaded onto M/V "Supertramp" for shipment,

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[3] Respondent requested that it be allowed to conduct its own inspection (i.e., to appoint a survey company) of the Cargo at the loading port. Claimant did not object to the request. (EXHIBIT 4)

[4] Respondent appears to contend in this proceeding that Claimant may have had an alternative means of obtaining payment, in the event that Fortis Bank confirmed the Letter of Credit. However, the issue of whether such confirmation was made is irrelevant, inasmuch as plaintiff elected not to pursue payment options, if any, from Fortis Bank.

world-wide market prices for the type of steel bars included in the Cargo had declined sharply, a fact which Respondent has acknowledged. (EXHIBIT 7) Although Respondent had no right under the Contract, or under any applicable law, to demand any reduction to the purchase price, it did so by using technical objections raised by Paribas Bank to purported deficiencies in the Letter of Credit as a pretext, clearly in an effort to avoid the consequences of the market decline.

Claimant did not accept Respondent's request for a significant discount in the purchase price under the Contract. Indeed, Fortis Bank, on Claimant's behalf, vehemently objected to Paribas Bank's request for such a discount based upon alleged minor discrepancies in the Documents. (EXHIBIT 8) In breach of the Contract, Respondent indicated its refusal to accept delivery of the Cargo, but at no time did Respondent raise any objection to the Cargo itself, which was, in fact (as is more fully described below), in full compliance with the relevant characteristics prescribed in the Contract.

By letter dated November 6, 2008, transmitted via fax to Respondent's New Jersey and New York offices (EXHIBIT 9), Claimant confirmed that the vessel containing the Cargo had arrived and berthed at the Port of Wilmington, Delaware, ready to discharge, and Claimant objected to Respondent's having used the contention of "minor discrepancies" in the Letter of Credit as a pretextual excuse to refuse to discharge, or to accept delivery of, the Cargo. As Respondent well knew, this excuse was entirely without merit, inasmuch as the issuance of the Letter of Credit was solely a vehicle under the Contract for Claimant to ensure that payment would be made. Under no circumstances would the issuance or non-issuance, or the dishonoring, of the Letter of Credit affect Respondent's underlying contractual payment obligation. For example, Paragraph 11.00 of the Contract gave *Claimant* the right to cancel the Contract in the event that the Letter of Credit was not issued, but Respondent was given no such right. Moreover, and as a result of the Letter of Credit having been dishonored, the above-referenced November 6, 2008 letter put Respondent on notice that "in order to mitigate" its losses, the Cargo was going to be discharged into a bonded warehouse and that "all related costs and expenses and risk will be for buyer's [Respondent's] sole account." In other words, Claimant put Respondent on notice that in the event that Respondent failed promptly to pay the full purchase price to Claimant, Respondent would suffer any consequential money damages incurred by Claimant.

As a result of Respondent's continued refusal to accept delivery of the Cargo, or to pay for the Cargo, Claimant found an alternative buyer (as described below), but at a sale price that was USD 891,065.88 less than the amount that Respondent had promised to pay under the Contract. As a result, Claimant seeks the recovery of damages in this proceeding in the amount of USD 891,065.88, plus interest, fees and expenses.

Argument

POINT I

CLAIMANT SUBSTANTIALLY PERFORMED ALL OF ITS DUTIES AND OBLIGATIONS UNDER THE CONTRACT. RESPONDENT BREACHED THE CONTRACT BY FAILING TO TAKE DELIVERY OF THE CARGO OR TO PAY THE PURCHASE PRICE

It cannot seriously be disputed that Claimant substantially complied with its responsibilities under the Contract by furnishing product (the Cargo) to Respondent consistent with the requirements of the Contract, and by making that product available to Respondent on a timely basis at the agreed upon port of discharge. In connection therewith, Claimant supplied Respondent either directly or through Paribas Bank with each of the following, all in full compliance with the provisions of the Contract:

- Bill of Lading. (EXHIBIT 10)
- Inspection Certificate. (EXHIBIT 11)
- Invoice. (EXHIBIT 12)
- Certificate of Origin. (EXHIBIT 13)
- Packing List. (EXHIBIT 14)
- Mill's Test Certificate. (EXHIBIT 15)
- Beneficiary's Shipping Advice. (EXHIBIT 16)
- Shipper's Certificate for Dunnage. (EXHIBIT 17)
- Certificate from Master Agents. (EXHIBIT 18)
- Confirmation that the vessel containing the Cargo had arrived and berthed at the Port of Wilmington, Delaware, ready to discharge. (EXHIBIT 9)

It is undisputed that Respondent refused to accept delivery of the Cargo or to pay to Claimant the purchase price that was prescribed in the Contract.

POINT II

THE FAILURE OF PARIBAS BANK TO HONOR THE LETTER OF CREDIT DID NOT RELIEVE RESPONDENT OF ITS OBLIGATION TO ACCEPT DELIVERY OF, AND TO PAY FOR, THE CARGO

A. *Respondent's Obligation to Pay Under the Contract Was Independent From Paribas Bank's Obligation to Honor Drafts Drawn on the Letter of Credit by Claimant*

In *First Commercial Bank v. Gotham Originals, Inc.*, 64 N.Y.2d 287, 486 N.Y.S.2d 715 (1985), the Court opined as follows:

> The fundamental principle governing these transactions is the doctrine of independent contracts. It provides that the issuing bank's obligation to honor drafts drawn on a letter of credit by the beneficiary is separate and independent from any obligation of its customer to the beneficiary under the sale of goods contract and separate as well from any obligation of the issuer to its customer under their agreement . . . . Stated another way, this principle stands for "the fundamental proposition . . . that all parties [to a letter of credit transaction] deal in documents rather than with the facts the documents purport to reflect" . . . .

Id. at 294-95 (quoting H. Harfield, Letters of Credit 76 (ALI-ABA Uniform Commercial Code Practice Handbook 1979)) (other citations omitted).

In the proceeding at bar, the Letter of Credit provides that the latest version (here, 600) of the Uniform Customs and Practice for Commercial Documentary Credits (the "UCP") is applicable. Articles 4 and 5 of UCP 600 confirm the "fundamental proposition" of independent contracts articulated in *First Commercial Bank, supra.*

Accordingly, Claimant's claim against Respondent for breach of contract is proper and correct in all respects.

B. *Claimant Did Not Accept the Letter of Credit as The Exclusive Mode of Payment, Nor Did Claimant Relinquish its Right to Seek Payment Directly From Respondent*

The Contact's provision for a Letter of Credit as a mode of payment was intended for Claimant's benefit, as providing for a secure manner in which payment of the purchase price could be obtained. That provision was not included in the Contract to bestow any benefits on Respondent, and it was certainly not intended as a waiver of Claimant's right to seek payment directly from Respondent, if need be. Similarly, the provisions of the Letter of Credit in no way altered Respondent's fundamental payment obligation under the Contract, nor did they create a condition precedent to Respondent's payment obligation. Therefore, it is respectfully submitted that Claimant is entitled to seek payment directly from Respondent by reason of Claimant's substantial performance of the Contract, without regard to any actions taken by Paribas Bank in connection with the Letter of Credit.

In *Greenough v. Olivier Straw Goods Corporation,* 53 F.2d 362 (2d Cir. 1931), the Court made the following observations regarding foreign letter of credit transactions:

> In the foreign letter of credit transactions, the goods are sold on credit, but the seller wants paper which can be readily negotiated in his own market, more readily than could the buyer's negotiable paper. . . . There does not seem to be much basis of fact for inferring an intention to accept the banker's letter of credit as absolute payment and to relinquish all rights against the buyer as soon as the draft is accepted.

Id. at 364. In addition, the Court held that "the authorities favor the view that there is no presumption that the seller takes a draft drawn under a letter of credit in absolute payment of the buyer's obligation to pay for the merchandise; hence upon default by the bank upon its draft the seller may look to the buyer." *Id.* at 365.

So, too, with regard to the situation at bar, where there is no basis for concluding that Claimant intended to accept the Letter of Credit of Credit as absolute payment or to relinquish all of its rights against Respondent under the Contract once the Letter of Credit was issued and accepted. Thus, and by reason of Respondent's default in taking delivery of the Cargo, and its failure to pay the agreed-upon purchase price, Respondent should now be responsible for Claimant's resulting losses.

As set forth in Point I above, Claimant substantially performed all of its obligations under the Contract. In *Oppenheimer & Co., Inc. v. Oppenheim, Appel, Dixon & Co.,* 205 A.D.2d. 412, 613 N.Y.S.2d 622 (1st Dep't 1994), the Court cogently and concisely articulated the doctrine of substantial performance: "Parties may indeed stipulate in a contract 'to effectuate a purpose that performance of every term shall be a condition of recovery'. . . . In the absence of such specific conditioning of recovery '[t]here will be no assumption of a purpose to visit venial faults with oppressive retribution.'" *Id.,* at 623 (quoting *Jacob & Youngs v. Kent,* 230 N.Y. 239, 242-43 (1921) ("We must weigh the purpose to be served, the desire to be gratified, the excuse for deviation from the letter, the cruelty of enforced adherence"). The Court further held as follows:

> The use of language creating conditions to recovery does not foreclose de minimis considerations. "Nowhere would a departure from full performance of a condition be regarded as important if the departure were an inconsiderable trifle having no pecuniary importance." . . . Where the primary purpose of a contract is fulfilled and any breaches are trivial in nature when contrasted with the substantial performance of a plaintiff who has continually proceeded with the utmost good faith, the defendant is not excused from its obligations under the contract.

Id. at 623-24 (quoting 5 Williston, Contracts §805, at 839-840 (3d ed 1961)) (other citations omitted).

The Contract does not stipulate that performance of every term shall be a condition of recovery by Claimant, and the primary purpose of the Contract was clearly fulfilled by Claimant. Moreover, even assuming, *arguendo,* that Claimant had not complied with all of the technical elements of the Letter of Credit, such purported noncompliance was clearly "trivial in nature." Accordingly, Respondent should not be excused from its obligation under the Contract to pay the purchase price for the Cargo (less the amount received by plaintiff by way of cover, as described below).

C. *Under the Uniform Commercial Code as Well, Claimant is Entitled to Recover the Purchase Price Directly from Respondent*

Although the Letter of Credit designates the latest (600) version of the UCP to apply to the Letter of Credit, applicable authority makes plain that the Uniform Commercial Code (the "UCC") may be applied to the issue of non-payment by Respondent of the purchase price for the Cargo.

In *United Bank v. Cambridge v. Sporting Goods Corp.,* 41 N.Y.2d, 254, 392 N.Y.S.2d 265 (1976), for example, the Court described the interrelationship between the UCP and the New York UCC as follows:

> It should be noted that the Uniform Customs and Practice controls, in lieu of article 5 of the code, where, unless otherwise agreed by the parties, a letter of credit is made subject to the provisions of the Uniform Customs and Practice by its terms or by agreement, course of dealing or usage of trade (Uniform Commercial Code, § 5-102, subd [4]). . . . However, even if the Uniform Customs and Practice were deemed applicable to this case, it would not, in the absence of a conflict, abrogate the precode case law (now codified in Uniform Commercial Code, § 5-114) and that authority continues to govern even where article 5 is not controlling . . . . Moreover, the Uniform Customs and Practice provisions are not in conflict nor do they treat with the subject matter of section 5-114 which is dispositive of the issues presented on this appeal . . . . Thus, we are of the opinion that the Uniform Customs and Practice, where applicable, does not bar the relief

provided for in section 5-114 of the code.

Id. at 260, n.2 (citations omitted).

In the instant proceeding, although the UCP applies to the Letter of Credit, it neither conflicts with, treats, nor addresses the subject matter of Section 2-325(2) of the UCC, and, thus, the relief accorded to Claimant by that Section is applicable. Section 2-325(2) of New York's UCC provides as follows: "The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to buyer require payment directly from him."

It cannot be disputed that the Letter of Credit was here dishonored and that Claimant gave Respondent "seasonable notification" that Respondent was required to pay Claimant directly. (See EXHIBIT 9) Therefore, it is respectfully submitted Respondent should be required to pay to Claimant the full amount sought herein.

POINT III

CLAIMANT WAS JUSTIFIED IN MITIGATING ITS DAMAGES

Respondent's having refused to take delivery of the Cargo or to pay for the Cargo as required by the Contract, and respondent's thereafter having been put on notice that Claimant intended to mitigate its damages (EXHIBIT 9), Claimant's sale of the Cargo to a third-party was proper and correct in all respects.

The Cargo was sold to Corus International Trading Limited ("Corus") for a purchase price of USD 1,113,832.35. The difference between this amount and the purchase price (USD

2,004,898.23) under the Contract is USD 891,065.88, which is the amount that Respondent should now be directed to pay Claimant.

The following documents are relevant to the sale of the Cargo to Corus:

- Bill of Lading. (EXHIBIT 19)
- Invoice. (EXHIBIT 20)
- Certificate of Origin. (EXHIBIT 21)
- Packing List. (EXHIBIT 22)
- Mill's Test Certificate. (EXHIBIT 23)

These documents demonstrate, among other things, that the Cargo which was sold to Corus is identical to the Cargo that Respondent purchased.[5]

[5] It should also be noted that the Cargo was duly inspected at the port in Wilmington, Delaware (EXHIBIT 24) and again at the port in Jacksonville, Florida in connection with the sale to Corus (EXHIBIT 25).

Conclusion

For all of the foregoing reasons, an award should be issued directing Respondent to pay to Claimant the sum of USD 891,065.88, together with interest thereon from November 6, 2008 and the administrative costs, fees and expenses of this proceeding.

Dated: October 7, 2011

Respectfully submitted,

[redacted]

By: [redacted]

[redacted]

[redacted]
New York, NY 10018
[redacted]

INTERNATIONAL CHAMBER OF COMMERCE
INTERNATIONAL COURT OF ARBITRATION

[redacted]

[redacted]

Claimant,

-against-

[redacted]

Respondent.

ANSWER TO REQUEST FOR ARBITRATION

A[redacted]), by its undersigned counsel, [redacted] F[redacted]P, as and for its Answer to Request for Arbitration, alleges and says:

1. [redacted] denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Verified Petition.

2. [redacted] admits the allegations in paragraph 2 of the Verified Petition.

3. [redacted], as buyer, and [redacted] ("Claimant"), as seller, entered into a contract for the sale and purchase of "Prime Newly Produced Deformed Reinforcing Steel Bars for Concrete Purposes" at a price of "*810 USD/mts CFR FO CQD Duty Paid Wilmington, Delaware, USA, according to Incoterms 2000*" for shipment from Turkey to Wilmington, Delaware. *See* Contract dated September 18, 2008 and addendum dated September 22, 2008 (the "Contract"), attached hereto and incorporated herein as Exhibit 1. Payment was to be made by "irrevocable and confirmed documentary Letter of Credit", which was to be issued by September 19, 2008.

4. As required by the Contract, on September 19, 2008, [redacted] opened an irrevocable letter of credit issued by its bank, BNP Paribas, in favor of Claimant, with an

expiration date of October 25, 2008 (the "Letter of Credit"), attached hereto and incorporated herein as Exhibit 2. The Letter of Credit required that Claimant present within 10 days after shipment but before expiry (October 25) documents strictly conforming to the instructions in the Letter of Credit. Claimant accepted the Letter of Credit as issued and proceeded to ship the goods identified under the Contract.

5. Claimant's bank, Fortis Bank. A.S., presented documents to BNP Paribas on October 20, 2008 (*see* Fortis Bank A.S. Advice of Payment dated October 20, 2008, attached hereto and incorporated herein as Exhibit 3). The documents were discrepant and did not strictly comply to the instructions contained in the Letter of Credit. BNP Paribas acknowledged receipt of the documentary remittance and rejected the same in accordance with Article 16 of UCP600. *See* Rejection by BNP Paribas, attached hereto and incorporated herein as Exhibit 4. BNP Paribas advised Claimant's bank (Fortis Bank AS Turkey) that it rejected the documents presented based on the following discrepancies:

* The Non Negotiable Bills of Lading were not signed as per special condition G.
* Inspection Certificate issued at loading "does not detail any packing, no colour composition of the goods stated and it does not mean anything just to mention "We confirm that the loaded quantity, total number of bundles, packing, color codes and the quality and chemical composition of the goods".
* no shipment advice had been sent. (The shipping advice was required to have been provided within 1 working day after Bill of Lading date).
* Master's agent's certificate does not refer to quantity nor goods shipped.

* Shipper's certificate for dunnage does not refer to quantity shipped.

6. The documents were put on hold by BNP Paribas, to enable Claimant to correct the discrepancies and present conforming documents. Claimant concedes, however, that it failed to present conforming documents before the October 25, 2008 expiry of the Letter of Credit. Nor did Claimant timely request or obtain a waiver of the discrepancies from [redacted]. As such, BNP Paribas was contractually obligated *not* to make payment to Claimant under the Letter of Credit.[1]

7. On November 5, 2008, [redacted] offered to accept the shipment despite non-conforming documents if Claimant agreed to discount the price of the goods by $300/mt. A copy of this November 5, 2008 offer is attached hereto and incorporated herein as <u>Exhibit 5</u>. Claimant rejected this amount and, on November 7, 2008, offered a discount of $150/mt, but provided only one hour for acceptance of its proposal. A copy of this November 7, 2008 message is attached hereto and incorporated herein as <u>Exhibit 6</u>. Claimant transmitted its counter-offer via banking channels *after* business hours and therefore [redacted] did not learn of the counter-offer until after it had already expired. Indeed, Claimant did not discharge the shipment in Wilmington, Delaware or provide [redacted] with an opportunity to inspect it, but instead discharged the cargo in Jacksonville, Florida, all in breach of its obligations under the Contract.

8. Claimant's allegations that [redacted] had no right to reject the tender of documents but did so due to market declines demonstrates a failure to understand the nature of a

[1] Claimant concedes that timely rejection was made by BNP Paribas, but apparently alleges that its own bank, Fortis Bank, failed to notify it of the rejection until October 27, 2008. If this is correct, then Claimant should raise this failure (and perhaps this claim) with its own bank. ACEMINOR has no relationship with Fortis Bank.

letter of credit. A letter of credit is a contract between the purchaser [redacted] and the bank (BNP Paribas), separate and distinct from the underlying sales contract. The issuing bank undertakes to pay the beneficiary [redacted] only if the beneficiary tenders commercial documents that strictly comply with the terms of the letter of credit contract. A bank that pays upon a presentation of *non-conforming* documents breaches its contract with its customer, the purchaser. Here, Claimant concedes that its documents were non-conforming and the bank's rejection was therefore proper as a matter of law.

9. [redacted] denies the allegations contained in paragraph 9 of the Request for Arbitration. As demonstrated by <u>Exhibit 6</u>, while Claimant responded to the request for a reduction in the purchase price, Claimant did so after business hours and did not provide sufficient time for [redacted] to respond to its counter-offer. Compounding the problem, Claimant did not make the shipment available for discharge at Wilmington, Delaware, but directed that the carrying vessel travel to and discharge in Jacksonville, Florida.

10. For the reasons set forth herein, [redacted] denies the allegations in paragraph 10 of the Request for Arbitration. Claimant's failure to tender documents that conformed to the requirements of the Letter of Credit is proper and legal grounds for rejection of the tender of documents. As also set forth herein, Claimant concedes that it did not correct the discrepancies in the documents.

11. [redacted] denies the allegations in paragraph 11 of the Request for Arbitration.

12. [redacted] admits that the Contract provided for arbitration of all disputes in New York.

13. [redacted] admits that the United States District Court appointed the

TRANSMISSION CONFIRMATION SVR_IMP_BSALJ214.071939 19/09/08 18:59:28 Page 01
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Created: 19/09/08 14:27:59 By : CASN01A Owner: CASN01A
Modif: 2
Message mention(s) : MESSAGE AUTHENTIFIE

Addressee : Correspondent : DISBTRISXXX LT :
ISN/OSN : 29657 Session Number : 3192

------------------------------ Recipient Units ------------------------------

AC5D AC 5 GROUPE D

------------------------------ MTPAK : Message Text ------------------------------

(177) DATE TIME 19.SEP,08 18H58M
(451) ACCEPT REJECT 0
(108) MUR E700080919151495

------------------------------ MT700 : Message Text ------------------------------

FROM : BNP PARIBAS (SUISSE) SA
FAX : +41.(0)58.212.22.22
TELEX : 412100 BNP CH
SWIFT : BPPBCHGGXXX
GENEVE CH

Outgoing message for info

TO : FORTIS BANK AS TURKEY
(FOR ALL BRANCHES NOT LISTED)
ISTANBUL TR

DATE : 19/09/2008 18:59

MT700 : ISSUE OF A DOCUMENTARY CREDIT
(27) SEQUENCE OF TOTAL MESSAGE NUMBER 1
NUMBER OF MESSAGES /2
(40A) FORM OF DOCUMENTARY CREDIT IRREVOCABLE
(20) DOCUMENTARY CREDIT NB. DCIM5737681/CASN
(31C) DATE OF ISSUE 19.SEP,08
(40E) APPLICABLE RULES UCP LATEST VERSION
(31D) DATE AND PLACE OF EXPIRY DATE 25.OCT,08
AT YOUR COUNTERS IN TURKEY
(50) APPLICANT [redacted]
EATONTWON,NEW JERSEY 07724 USA
(59) BENEFICIARY ACCOUNT NUMBER
NAME & ADDRESS
[redacted].S.
[redacted], ISTANBUL, TURKEY
(32B) CURR. CODE, AMOUNT CURRENCY CODE USD
AMOUNT 2,024,947.35
(39A) PERCENTAGE CREDIT AMOUNT TOLERANCE
00/10
(41A) AVAILABLE WITH ..., BY ... DISBTRISXXX
FORTIS BANK AS TURKEY
ISTANBUL TR
BY PAYMENT
(43P) PARTIAL SHIPMENTS NOT ALLOWED
(43T) TRANSHIPMENT NOT ALLOWED
(44E) PORT OF LOADING/AIRPORT OF DEPARTURE

TRANSMISSION CONFIRMATION SVR_IMP_BSALJ214.071939 19/09/08 18:59:28 Page 02
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Message: E700080919151495 Queue: CONFEMISBALEAC Nature: SWF Type : 700
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Created: 19/09/08 14:27:59 By : CASN01A Owner: CASN01A
Modif: 2
Message mention(s) : MESSAGE AUTHENTIFIE

ANY PORT IN TURKEY
(44F) PORT OF DISCHARGE/AIRPORT OF DESTINATION
WILMINGTON, DELAWARE, USA
(44C) LATEST DATE OF SHIPMENT 15.OCT,08
(45A) DESCR. OF GOODS AND/OR SERVICES
MATERIAL :PRIME NEWLY PRODUCED DEFORMED REINFORCING STEEL BARS
QUALITY: AS PER ASTM A615/A 615M-06 GRADE 40 AND GRADE 60
SIZE BREAKDOWNS ARE AS FOLLOWS:
.

DIAMETER	LENGTH(FEET)	GRADE	THEORETICAL WEIGHT IN MT
NO. 3	20	40	185.170
NO. 3	20	60	211.542
NO. 3	40	40	19.958
NO. 3	40	60	25.000
NO. 4	20	40	318.021
NO. 4	20	60	703.149
NO. 4	30	60	20.000
NO. 4	40	60	64.916
NO. 5	20	40	25.000
NO. 5	20	60	526.206
NO. 5	30	60	40.000
NO. 5	40	60	64.916
NO. 6	20	60	174.811
NO. 6	40	60	25.000
NO. 7	20	60	28.144
NO. 7	40	60	19.958
NO. 8	20	60	48.144
TOTAL			2,499.935

.
TOTAL QUANTITY (THEORETICAL WEIGHT): 2,499.935 MT (+0/-10 PCT)
UNIT PRICE: USD.810/MT CFR FO, CQD, DUTY
PAID, WILMINGTON, DELAWARE, USA (ACC.TO INCOTERMS 2000)
INVOICING : BASED ON THEORETICAL WEIGHT BASIS
.
PACKING : IN BUNDLES WITH UNIFORM PIECE COUNT AND BE SECURELY TIED
.
BUNDLES IN 30' AND 40' LENGTHS A MINIMUM OF 6 SPOTS WITH 3 LIFTING HOOKS AND FOR 20' LENGTHS A MINIMUM OF 4 SPOTS WITH 2 LIFTING HOOKS.
THE BUNDLES ARE TIED WITH 7MM WIRE RODS. BUNDLES DO NOT INCLUDE ANY RANDOM SHORT LENGTHS AND PIECES ARE CONSISTENT THROUGHOUT. FOR 20' BUNDLE WEIGHT IS MAX. 1 MT, FOR 30' BUNDLE WEIGHT IS MAX. 1.5 MT AND FOR 40' BUNDLE WEIGHT IS MAX. 2 MT.
.
PCS/BDL
NO. 3 - 266
NO. 4 - 150
NO. 5 - 96
NO. 6 - 68
NO. 7 - 49
NO. 8 - 38
.
LENGTH TOLERANCE : +4/-0 INCHES
MANUFACTURER : ICDAS CELIK ENERJI TERSANE VE ULASIM SANAYI A.S.
ORIGIN : TURKEY
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TRANSMISSION CONFIRMATION SVR_IMP_BSALJ214.071939 19/09/08 18:59:28 Page 03
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Created: 19/09/08 14:27:59 By : CASN01A Owner: CASN01A
Modif: 2

Message mention(s) : MESSAGE AUTHENTIFIE

COLOR CODING:
WHITE ON ONE END OF THE BUNDLE.OTHER ENDS ARE COLORED AS
FOLLOWS :

.

NO. 3 - RED
NO. 4 - YELLOW
NO. 5 - BLUE
NO. 6 - BLACK
NO. 7 - ORANGE
NO. 8 - GREEN

(46A) DOCUMENTS REQUIRED

1. BENEFICIARY'S SIGNED COMMERCIAL INVOICE IN 1 ORIGINAL 2 COPIES BASED ON THEORETICAL WEIGHT AND CONFIRMING THAT THE GOODS ARE IN STRICT ACCORDANCE WITH CONTRACT NO.UY-C-160908 DATED SEPTEMBER 16,2008.

.

2. CERTIFICATE OF ORIGIN IN 1 ORIGINAL AND 2 COPIES CERTIFIED OR LEGALIZED BY THE TURKISH CHAMBER OF COMMERCE, CONFIRMING THAT THE GOODS ARE OF TURKISH ORIGIN ,INDICATING ALSO THE MANUFACTURER (FULL NAME AND ADDRESS) SHOWING AS EXPORTER/SHIPPER/CONSIGNOR, IF ANY:
[redacted] A.S.
[redacted]
AND CONSIGNEE AS :
[redacted].
[redacted] 'A' SUITE 2
EATONTOWN, NEW JERSEY 07724 USA

.

3. PACKING LIST ISSUED AND SIGNED BY MANUFACTURER IN 1 ORIGINAL AND 2 COPIES, SHOWING ALSO QUANTITY PER SIZE AND IN TOTAL, NUMBER OF BUNDLES PER SIZE AND IN TOTAL AND CONFIRMING THE PACKING. THE PACKING LIST MUST BE MADE OUT 'TO WHOM IT MAY CONCERN'

.

4. MILL'S TEST CERTIFICATE IN 1 ORIGINAL AND 2 COPIES ISSUED AND SIGNED BY MANUFACTURER,SHOWING ALSO QUALITY,CHEMICAL AND MECHANICAL ANALYSIS PER HEAT IN ACCORDANCE WITH THE INDICATED SPECIFICATIONS. THIS CERTIFICATE MUST BE MADE OUT 'TO WHOM IT MAY CONCERN' OR KEPT IN BLANK/NEUTRAL FORM.

.

5. FULL SET OF 3/3 ORIGINAL CLEAN SHIPPED ON BOARD BILLS OF LADING PLUS 3 NON-NEGOTIABLE COPIES, ISSUED TO THE ORDER OF BNP PARIBAS (SUISSE) SA, SHOWING GOODS DESCRIPTION, QUANTITY, NUMBER OF BUNDLES, MARKED 'FREIGHT PREPAID' AND STATING AS NOTIFY PARTY:
[redacted].
[redacted]USTRIAL WAY WEST BUILDING 'A'
[redacted]ATONTOWN,NEW JERSEY 07724 USA
PHONE:732-460-1213 - MR.JAMES J.DOYLE

.

6. INSPECTION CERTIFICATE IN 1 ORIGINAL AND 2 COPIES ISSUED BY AN INDEPENDENT INSPECTION COMPANY CONFIRMING THE LOADED QUANTITY, TOTAL NUMBER OF BUNDLES,PACKING,COLOR CODES AND THE QUALITY AND CHEMICAL COMPOSITION OF THE GOODS.
THE INSPECTION CERTIFICATE MUST BE MADE OUT 'TO WHOM IT MAY CONCERN' OR KEPT IN BLANK/NEUTRAL FORM.

.

TRANSMISSION CONFIRMATION SVR_IMP_BSALJ214.071939 19/09/08 18:59:28 Page 04
****
Company: UEB
Message: E700080919151495 Queue: CONFEMISBALEAC Nature: SWF Type : 700
MUR : E700080919151495 Unit : AC5D Network: SWIFT Prio : N
Created: 19/09/08 14:27:59 By : CASN01A Owner: CASN01A
Modif: 2

Message mention(s) : MESSAGE AUTHENTIFIE

7. COPY OF BENEFICIARY'S SHIPPING ADVICE SENT WITHIN 1 WORKING DAY AFTER B/L DATE INDICATING THE FOLLOWING:
. - TOTAL NUMBER OF BUNDLES
. - QUANTITY (PER SIZE AND IN TOTAL)
. - NAME OF THE CARRYING VESSEL
. - B/L NUMBER AND DATE
. - PORT OF LOADING
. - PORT OF DISCHARGE
. - GOODS DESCRIPTION
. - VALUE OF THE MATERIAL SHIPPED
. - DISCHARGE PORT AGENT
.
TO BE SENT TO:
.
BNP PARIBAS (SUISSE) SA
ATTN. NURIA CASALS
QUOTING REF. NO. LCIM5737681/CASN
FAX NUMBER: ++41 58 212 52 00
.
(A COPY OF THE TRANSMISSION REPORTS MUST BE ATTACHED TO THIS DOCUMENT)
.
8. SHIPPER'S CERTIFICATE FOR DUNNAGE STATING THAT THE MATERIALS USED FOR THIS SHIPMENT ARE TOTALLY FREE FROM BARK AND OF ANY SIGNS OF LIVING PESTS.ALL WOODEN DUNNAGE COMPLIES WITH THE FINAL RULE OF THE US DEPT. OF AGRICULTURE AS PUBLISHED IN THE FEDERAL REGISTER, VOLUME 69,NO.179,16/09/04.THE CERTIFICATE MUST BE MADE OUT 'TO WHOM IT MAY CONCERN' OR KEPT IN BLANK/NEUTRAL FORM.
.
9. CERTIFICATE FROM CARRIER, MASTER, VESSEL OWNER OR THEIR AGENTS CERTIFYING THAT THE VESSEL IS LLOYDS REGISTERED OR EQUIVALENT, SUITABLE AND SEAWORTHY FOR VOYAGE AND THAT THE VESSEL IS ISM (INTERNATIONAL SAFETY MANAGEMENT CODE) COMPLIANT VESSEL AND HAS GOOD CERTIFIED ROTATING CRANES OF AT LEAST 20 MT SWL AND ALSO THAT THE VESSEL IS NOT MORE THAN 25 YEARS OF AGE.

(71B) CHARGES ALL BANK COMMISSIONS AND CHARGES OUTSIDE SWITZERLAND ARE FOR BENEFICIARIES ACCOUNT AND MAY NOT BE WAIVED. IN THIS RESPECT PLEASE NOTE THAT ART. 37C OF UCP 600 IS ENTIRELY EXCLUDED.

(48) PERIOD FOR PRESENTATION DOCUMENTS TO BE PRESENTED WITHIN 10 DAYS AFTER SHIPMENT DATE BUT IN ANY CASE WITHIN THE VALIDITY OF THE D/C.

(49) CONFIRMATION INSTRUCTIONS MAY ADD

(78) INSTRUCTIONS TO PAY./ACCEPT./NEGOTIAT. BANK
UPON RECEIPT AT OUR COUNTERS (UNTIL 16:00 OUR TIME) OF YOUR AUTHENTICATED MESSAGE, CONFIRMING THAT YOU HAVE HONOURED OR TAKEN UP A COMPLYING PRESENTATION AND FORWARDED THE DOCUMENTS TO OUR ADDRESS BY COURIER SERVICE, INDICATING NAME OF COURIER SERVICE USED AND COURIER AWB NUMBER, WE SHALL COVER YOU IN ACCORDANCE WITH YOUR INSTRUCTIONS WITH VALUE 4 TURKISH/SWISS/USA BANK WORKING DAYS.
.
IF YOU ADD YOUR CONFIRMATION TO THE CREDIT, PLESE INFORM US

TRANSMISSION CONFIRMATION SVR_IMP_BSALJ214.071939 19/09/08 18:59:28 Page 05
****

Company: UEB
Message: E7000809191S1495 Queue: CONFEMISBALEAC Nature: SWF Type : 700
MUR : E7000809191S1495 Unit : AC5D Network: SWIFT Prio : N
Created: 19/09/08 14:27:59 By : CASN01A Owner: CASN01A
Modif: 2

Message mention(s) : MESSAGE AUTHENTIFIE

ACCORDINGLY WITHOUT DELAY. IN THIS CASE, YOUR REIMBURSEMENT CLAIM
MUST INDICATE THAT YOU HAVE HONOURED A COMPLYING PRESENTATION.
(72) SENDER TO RECEIVER INFORMATION
PLEASE ADVISE BENEFICIARY IMME-
DIATELY. YOUR TODAY'S FAX PRE-
ADVICE WILL BE HIGHLY APPRECIA-
TED. PLEASE ACKNOWLEDGE RECEIPT
QUOTING O/REF. LCIM5737681/CASN.
(-) END OF MESSAGE

****
END TRANSMISSION CONFIRMATION SVR_IMP_BSALJ214.071939

TRANSMISSION CONFIRMATION SVR_IMP_BSALJ214.071940 19/09/08 19:01:28 Page 01
****

Company: UEB
Message: E701080919151496 Queue: CONFEMISBALEAC Nature: SWF Type : 701
MUR : E701080919151496 Unit : AC5D Network: SWIFT Prio : N
Created: 19/09/08 14:27:59 By : CASN01A Owner: CASN01A
Modif: 2
Message mention(s) : MESSAGE AUTHENTIFIE

Addressee : Correspondent : DISBTRISXXX LT :
ISN/OSN : 29658 Session Number : 3192

---------------------------- Recipient Units ----------------------------

AC5D AC 5 GROUPE D

------------------------- MTPAK : Message Text -------------------------

(177) DATE TIME 19.SEP,08 19H00M
(451) ACCEPT REJECT 0
(108) MUR E701080919151496

------------------------- MT701 : Message Text -------------------------

FROM : BNP PARIBAS (SUISSE) SA
FAX : +41.(0)58.212.22.22
TELEX : 412100 BNP CH
SWIFT : BPPBCHGGXXX
GENEVE CH

TO : FORTIS BANK AS TURKEY
(FOR ALL BRANCHES NOT LISTED)
ISTANBUL TR

DATE : 19/09/2008 19:01

MT701 : ISSUE OF A DOCUMENTARY CREDIT (CONTINUED)
(27) SEQUENCE OF TOTAL MESSAGE NUMBER 2
NUMBER OF MESSAGES /2
(20) DOCUMENTARY CREDIT NB. LCIM5737681/CASN
(47B) ADDITIONAL CONDITIONS
A- ALL DOCUMENTS (INCLUDING THOSE UNDER ADDITIONAL CONDITIONS, IF ANY) MUST BE DATED, BEAR THE PLACE OF ISSUE AND MUST BE MADE OUT IN THE ENGLISH LANGUAGE EXCEPT PREPRINTED WORDINGS AND STAMPS
B- CHARTER PARTY BILLS OF LADING ACCEPTABLE PROVIDED THAT THE CHARTER PARTY DATE IS ALSO INDICATED
C- ANY CORRECTION AND/OR ALTERATION ON THE DOCUMENTS MUST BE SIGNED AND STAMPED BY THE ISSUER OF THE DOCUMENT, UNLESS OTHERWISE STATED
D- NO DOCUMENT, EXCEPT THE INVOICE OR UNLESS OTHERWISE REQUESTED MUST SHOW ANY DOCUMENTARY CREDIT NUMBER OR DATE, ANY UNIT PRICE, TOTAL GOODS VALUE, TRADE TERMS, ANY INVOICE NUMBER AND/OR DATE, ANY CONTRACT NUMBER AND/OR DATE, ANY BANK NAME AND REFERENCE NOR APPLICANT'S NAME AND ADDRESS
E- NO DOCUMENT, EXCEPT PRESENTING BANK'S REMITTANCE LETTER MAY BE STAMPED, SIGNED OR MARKED BY THE PRESENTING BANK IN ANY WAY
F- ALL DOCUMENTS (INCLUDING THOSE UNDER ADDITIONAL CONDITIONS, IF ANY) MUST CLEARLY REFER TO THE GOODS AND THE WEIGHT. THE WEIGHT INDICATED MUST BE CLEARLY IDENTIFIED AS THEORETICAL WEIGHT EXCEPT BILLS OF LADING WHICH MUST SHOW THEORETICAL WEIGHT AND ACTUAL WEIGHT AND MUST BE MENTIONED IN METRIC TONS. NO DOCUMENT MUST SHOW THE QUANTITY WITH THE TOLERANCE. THE EFFECTIVE WEIGHT SHIPPED IN METRIC TONS/OR

TRANSMISSION CONFIRMATION SVR_IMP_BSALJ214.071940 19/09/08 19:01:28 Page 02
****

Company: UEB
Message: E701080919151496 Queue: CONFEMISBALEAC Nature: SWF Type : 701
MUR : E701080919151496 Unit : AC5D Network: SWIFT Prio : N
Created: 19/09/08 14:27:59 By : CASN01A Owner: CASN01A
Modif: 2

Message mention(s) : MESSAGE AUTHENTIFIE

OTHER WEIGHT MEASURE MUST BE STATED.
G- ALL DOCUMENTS (INCLUDING THE COPIES) MUST BE ORIGINALLY SIGNED AND STAMPED/SEALED BY ITS ISSUER, EXCEPT COURIER RECEIPT, IF ANY. IF PHOTOCOPIES ARE REQUIRED THEY DO NOT NEED TO BE ORIGINALLY SIGNED AND STAMPED/SEALED BY ITS ISSUER, SUBJECT THAT THE SIGNATURE AND STAMP/SEAL MADE ON THE ORIGINAL DOCUMENT IS EVIDENCED/REFLECTED ON THE PHOTOCOPY.
H- ELECTRONIC DOCUMENTS ARE NOT ACCEPTABLE
I- BILLS OF LADING SHOWING REMARK: 'ATMOSPHERICAL RUST' ARE ACCEPTABLE
J- ON DECK SHIPMENT IS NOT ALLOWED
K- IN CASE OF PRESENTATION OF DISCREPANT DOCUMENTS, SHOULD THEY BE ACCEPTED, WE SHALL DEDUCT A DISCREPANCY FEE OF CHF 250.00 OR EQUIVALENT FROM OUR PAYMENT, FOR EACH SET OF DOCUMENTS PRE-SENTED

.

INSTRUCTIONS TO THE REMITTER OF DOCUMENTS:
ALL DOCUMENTS HAVE TO BE SENT IN ONE LOT PREFERRABLY BY COURIER SERVICE (DHL PREFERRED) TO FOLLOWING ADDRESS :

.

BNP PARIBAS (SUISSE) SA
DOCUMENTARY CREDIT DEPT. AC5
ATTN. NURIA CASALS
AESCHENGRABEN 26
CH - 4002 BASLE / SWITZERLAND

.

QUOTING OUR REF.: LCIM5737681/CASN

.

FOR YOUR GUIDANCE/ASSISTANCE:
PERSON IN CHARGE: NURIA CASALS
OUR PHONE NO. : +41(0)58.212.5321
OUR FAX NO. : +41(0)58.212.5200
OUR SWIFT CODE : BPPBCHGGXXX - ATTN. DOC. CREDIT DEPT. AC5
OUR TELEX NO. : 412 100 - ATTN. DOC. CREDIT DEPT. AC5
(-) END OF MESSAGE

****

END TRANSMISSION CONFIRMATION SVR_IMP_BSALJ214.071940

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MESSAGE RECEPTION          SVR_IMP_BSALJ213.057798  20/10/08 16:51:01 Page 01
******************************************************************************
Company: UEB
Message: R754081020393780  Queue: AC55              Nature: SWF   Type : 754
MUR    : R754081020393780  Unit : AC55              Network: SWIFT Prio : N
Created: 20/10/08 16:50:38
Message mention(s)          : ORIGINAL
Operations mention(s)       : MESSAGE AUTHENTIFIE


Transmitter   : Correspondent : DISBTRISCIB        LT : DISBTRISACIB
ISN/OSN       : 319125                 Session Number : 3229
-------------------------- Recipient Units ------------------------------

AC55   AC 5
AC599  AC 5 (COPIE MR. CANTONI)

-------------------------- MT754 : Message Text --------------------------

FROM : FORTIS BANK A.S.
       (KURUMSAL BANKACILIK)
       ISTANBUL TR

TO   : BNP PARIBAS (SUISSE) SA
       FAX   : +41.(0)58.212.22.22
       TELEX : 412100 BNP CH
       SWIFT : BPPBCHGGXXX
       GENEVE CH

DATE : 20/10/2008


MT754 : ADVICE OF PAYMENT/ACCEPTANCE/NEGOTIATION
(20 ) SENDER'S REF.             0677210800143
(21 ) RELATED REF.              LCIM5737681/CASN
(32A) PRINCIPAL AMOUNT PAID/ACCEPTED/NEGOTIATED
                                DATE           20.OCT,08
                                CURRENCY CODE USD
                                AMOUNT                    2,004,898.23
(34A) TOTAL AMOUNT CLAIMED      DATE           27.OCT,08
                                CURRENCY CODE USD
                                AMOUNT                    2,004,898.23
(57A) ACCOUNT WITH BANK         CHASUS33XXX
                                JPMORGAN CHASE BANK, N.A.
                                NEW YORK US
(58A) BENEFICIARY BANK          /544747946
                                DISBTRISXXX
                                FORTIS BANK AS TURKEY
                                ISTANBUL TR
(77A) NARRATIVE                 WE CERTIFY THAT ALL TERMS AND
                                CONDITIONS OF THE CREDIT HAVE BEEN
                                STRICTLY COMPLIED WITH.
                                DHL NO:6051066965
(-) END OF MESSAGE

******************************************************************************
END MESSAGE RECEPTION                              SVR_IMP_BSALJ213.057798
```

TRANSMISSION CONFIRMATION SVR_IMP_BSALJ214.073695 22/10/08 12:23:38 Page 01
****

Company: UEB
Message: E734081022410751 Queue: CONFEMISBALEAC Nature: SWF Type : 734
MUR : E734081022410751 Unit : AC5D Network: SWIFT Prio : N
Created: 22/10/08 11:23:58 By : CASN01A Owner: CASN01A
Modif: 1

Message mention(s) : MESSAGE AUTHENTIFIE

Addressee : Correspondent : DISBTRISCIB LT :
ISN/OSN : 121081 Session Number : 3231

--------------------------- Recipient Units ---------------------------

AC5D AC 5 GROUPE D

--------------------------- MTPAK : Message Text ---------------------------

(177) DATE TIME 22.OCT;08 12H23M
(451) ACCEPT REJECT 0
(108) MUR E734081022410751

--------------------------- MT734 : Message Text ---------------------------

FROM : BNP PARIBAS (SUISSE) SA
FAX : +41.(0)58.212.22.22
TELEX : 412100 BNP CH
SWIFT : BPPBCHGGXXX
GENEVE CH

TO : FORTIS BANK A.S.
(KURUMSAL BANKACILIK)
ISTANBUL TR

DATE : 22/10/2008 12:23

Further to attached claim received — these are discrepancies found and advised to bank. Please let us know if you accept docs and indicate value date of payment, if any.

MT734 : ADVICE OF REFUSAL
(20) SENDER'S TRN LCIM5737681/CASN
(21) PRESENTING BANK'S REF. 0677210800143
(32A) DATE AND AMOUNT OF UTILISATION
DATE 20.OCT,08
CURRENCY CODE USD
AMOUNT 2,004,898.23
(72) SENDER TO RECEIVER INFORMATION
THE DOCUMENTS ARE REFUSED IN ACCORDANCE WITH ARTICLE 16 OF THE UCP600
(77J) DISCREPANCIES
ACKNOWLEDGE RECEIPT OF YOUR CLAIM AS WELL AS YOUR DOCUMENTARY REMITTANCE DATED 20/10/2008 WHICH IS REFUSED DUE TO THE FOLLOWING DISCREPANCIES:
BILLS OF LADING: NON NEGOTIABLE COPIES NOT SIGNED AS PER SPECIAL CONDITION G)
INSPECTION CERTIFICATE DOES NOT DETAIL ANY PACKING, NO COLOUR CODES CONFIRMED, NO CHEMICAL COMPOSITION OF THE GOODS STATED AND IT DOES NOT MEAN ANYTHING JUST TO MENTION: 'WE CONFIRM THAT THE LOADED QUANTITY, TOTAL NUMBER OF BUNDLES, PACKING, COLOR CODES AND THE QUALITY AND CHEMICAL COMPOSITION OF THE GOODS'

```
TRANSMISSION CONFIRMATION  SVR_IMP_BSALJ214.073695  22/10/08 12:23:38 Page 02
******************************************************************************
Company: UEB
Message: E734081022410751  Queue: CONFEMISBALEAC    Nature: SWF   Type : 734
MUR    : E734081022410751  Unit : AC5D            Network: SWIFT Prio : N
Created: 22/10/08 11:23:58 By    : CASN01A           Owner: CASN01A
                                                     Modif: 1
Message mention(s)        : MESSAGE AUTHENTIFIE

 DESPITE OF THE TRANSMISSION REPORT
 PRESENTED, NO SHIPMENT ADVICE HAS
 BEEN SENT TO US.
 MASTER'S AGENT'S CERTIFICATE DOES
 NOT REFER TO QUANTITY NOR GOODS
 SHIPPED.
 SHIPPER'S CERTIFICATE FOR DUNNAGE
 DOES NOT REFER TO QUANTITY SHIPPED.
(77B) DISPOSAL OF DOCUMENTS       /HOLD/WE HAVE CONTACTED THE APPLI-
                                  //CANT AND SHALL NOT FAIL TO REVERT
                                  //UPON RECEIPT OF THEIR ANSWER.
(-) END OF MESSAGE

*****************************************************************************
END TRANSMISSION CONFIRMATION                        SVR_IMP_BSALJ214.073695
```

TRANSMISSION CONFIRMATION SVR_IMP_BSALJ214.074458 05/11/08 09:50:30 Page 01
****
Company: UEB
Message: E799081105525095 Queue: CONFEMISBALEAC Nature: SWF Type : 799
MUR : AC5BURI016407676 Unit : AC5 Network: SWIFT Prio : N
Created: 05/11/08 09:49:03 Modif: 1
Message mention(s) : MESSAGE AUTHENTIFIE

Addressee : Correspondent : DISBTRISCIB LT :
ISN/OSN : 160129 Session Number : 3250

---------------------------- Recipient Units ----------------------------

AC5 AC 5 APPLI

---------------------------- MTPAK : Message Text ----------------------------

(177) DATE TIME 05.NOV,08 09H49M
(451) ACCEPT REJECT 0
(108) MUR AC5BURI016407676

---------------------------- MT799 : Message Text ----------------------------

FROM : BPPBCHGGXXX
BNP PARIBAS (SUISSE) SA
FAX : +41.(0)58.212.22.22
TELEX : 412100 BNP CH
SWIFT : BPPBCHGGXXX
GENEVE CH

TO : DISBTRISCIB
FORTIS BANK A.S.
(KURUMSAL BANKACILIK)
ISTANBUL TR

DATE : 05/11/2008 09:50

MTN99 : FREE FORMAT MESSAGE
(20) TRANSACTION REF. NB. LCIM5737681
(21) RELATED REF. 0677210800143
(79) NARRATIVE
REFERRING TO OUR MT734 DATED 20TH OCTOBER 2008
REGARDING OUR REFUSAL OF DOCUMENTS DUE TO
DISCREPANCIES FOUND ON DOCUMENTS PRESENTED TO US
AMOUNTING TO USD 2,004,898.23, YOUR REPLY ON 22ND
OCTOBER 2008 BY MT799 AS WELL AS OUR REPLY BY
MT799 DATED 24TH OCTOBER 2008, THEN YOUR MT799
DATED 30TH OCTOBER 2008 AND OUR MT799 OF SAME
DATE, PLEASE NOTE THAT WE HAVE NOW BEEN INSTRUCTED
BY THE APPLICANT TO SEND YOU THE FOLLOWING
MESSAGE:
QUOTE
PLEASE INFORM FORTIS BANK A.S., ISTANBUL THAT WE
ARE READY TO ACCEPT THE DOCUMENTS ONLY WITH A
USD 300.00 PER MT PRICE DISCOUNT (WITH A TOTAL
DISCOUNT OF USD 742,554.90 - I.E. 2,475.183 TIMES
USD 300.00 PER MT), OTHERWISE DOCUMENTS SHALL NOT
BE ACCEPTED BY US. WE ARE WAITING FOR A REPLY FROM
YOUR SIDE BY LATEST TOMORROW NOVEMBER 06,2008.
UNQUOTE
THEREFORE PLEASE LET US KNOW BY RETURN DULY
AUTHENTICATED MESSAGE IF YOU ACCEPT REDUCED
PAYMENT OF USD 1,262,343.33 ONLY I.O. THE CLAIMED
USD 2,004,898.23.

TRANSMISSION CONFIRMATION SVR_IMP_BSALJ214.074458 05/11/08 09:50:30 Page 02
****

Company: UBB
Message: E799081105525095 Queue: CONFEMISBALEAC Nature: SWF Type : 799
MUR : AC5BURI016407676 Unit : AC5 Network: SWIFT Prio : N
Created: 05/11/08 09:49:03 Modif: 1
Message mention(s) : MESSAGE AUTHENTIFIE

PLEASE NOTE THAT IN THE MEANTIME, DOCUMENTS ARE
HELD WITH US AT YOUR ENTIRE DISPOSAL AND RISK.

BEST REGARDS,
NURIA CASALS
(-) END OF MESSAGE

****
END TRANSMISSION CONFIRMATION SVR_IMP_BSALJ214.074458

MESSAGE RECEPTION SVR_IMP_BSALJ213.058832 07/11/08 14:58:56 Page 01

Company: UEB Nature: SWF Type : 799
Message: R799081107551717 Queue: AC55 Network: SWIFT Prio : U
MUR : R799081107551717 Unit : AC55
Created: 07/11/08 14:58:41
Message mention(s) : ORIGINAL
Operations mention(s) : MESSAGE AUTHENTIFIE

Transmitter : Correspondent : DISBTRISCIB LT : DISBTRISACIB
ISN/OSN : 409529 Session Number : 3253

------------------------- Recipient Units -------------------------

URGENT

AC55 AC 5
AC599 AC 5 (COPIE MR. CANTONI)

TO: Aceminor USA LLC
Mr. Aykut / Mr. Eser / Mr. Icimel

------------------------- MT799 : Message Text -------------------------

FROM : DISBTRISCIB
FORTIS BANK A.S.
(KURUMSAL BANKACILIK)
ISTANBUL TR

cc: GC7 – Mr. A. Küttel.

TO : BPPBCHGGXXX
BNP PARIBAS (SUISSE) SA
FAX : +41.(0)58.212.22.22
TELEX : 412100 BNP CH
SWIFT : BPPBCHGGXXX
GENEVE CH

For your comment / approval please!

DATE : 07/11/2008

Thks

MTN99 : FREE FORMAT MESSAGE
(20) TRANSACTION REF. NB. 0677210800143
(21) RELATED REF. LCIM5737681
(79) NARRATIVE
ATTN.TRADE DEPT.

BNP PARIBAS (SUISSE) SA
7.11.2008
Aeschengraben 26 · P.O. Box
CH-4002 Basle / Switzerland
A. Cantoni

REFERING TO YR MT799 DD.081105

WE HAVE BEEN INSTRUCTED BY THE BENEFICIARY TO
SEND YOU THE FOLLOWING MESSAGE:
QUOTE
PLEASE RELAY OUR DISCOUNT OFFER TO THE APPLICANT-
ACEMINOR USA LLC VIA APPLICANT'S BANK-BNP PARIBAS
(SUISSE) SA FOR 150 USD/MT BY RESERVING ALL
COMMERCIAL INTERESTS (BENEFITS) AND LEGAL RIGHTS
ON THE L/C.
UNQUOTE
THEREFORE PLEASE LET US KNOW BY RETURN
AUTHENDICATED SWIFT MESSAGE IF YOUR CLIENT
ACCEPT ABOVE OFFER WITHIN ONE HOUR.

BEST REGARDS
FORTIS BANK A.S.
CIB OPERATION
(-) END OF MESSAGE

END MESSAGE RECEPTION SVR_IMP_BSALJ213.058832

INTERNATIONAL COURT OF ARBITRATION OF THE

INTERNATIONAL CHAMBER OF COMMERCE

[redacted]

[redacted] (Turkey)

Claimant

v.

[redacted] (U.S.A.)

Respondent

TERMS OF REFERENCE

(Issued pursuant to Article 18 of the Rules of Arbitration
of the International Chamber of Commerce)

Sole Arbitrator: [redacted]

DOCSMTL: 4374080\3

TABLE OF CONTENTS

I. FULL NAMES AND DESCRIPTIONS OF THE PARTIES

A. *Claimant*

1. [redacted] ("**Claimant**" or [redacted]") is a corporation organised and existing under the laws of Turkey and is one of Turkey's largest producers and exporters of steel bars and high alloy steels.

2. Claimant's principal place of business is located at [redacted] Istanbul, Turkey.

3. Claimant is represented by:

[redacted].
J[redacted] Esq.
[redacted]N, LLP
1[redacted]0th Floor
[redacted]10018
U.S.A.
Tel.: +[redacted]
Fax: +[redacted]1
Email: [redacted]

B. *Respondent*

4. [redacted]) is a corporation organized under the laws of the State of New Jersey, USA, and is an international distributor of steel products, with special focus on U.S. and African markets.

5. Respondent's principal place of business is located at [redacted]5, U.S.A.

6. Respondent is represented by:

J[redacted]q.
[redacted]sq.
[redacted]N LLP
[redacted]ue
[redacted]017
U.S.A.
Tel.: [redacted]5
Fax: [redacted]
Email: [redacted]m
[redacted]a.com

II. ADDRESSES OF THE PARTIES FOR NOTIFICATION PURPOSES

7. The addresses of the parties, to which notifications and communications arising in the course of the arbitration may validly be made, are as follows:

For Claimant

[redacted]
U.S.A.
Tel.: [redacted]
Fax: [redacted]
Email: [redacted]

For Respondent

[redacted]
U.S.A.
Tel.: [redacted]
Fax: [redacted]
Email: [redacted]

8. The parties, counsel and the sole arbitrator shall notify all parties, all signatories of the present Terms of Reference and the ICC Secretariat of any change of name, description, address, email, telephone or fax number. In the absence of any such notification, communications sent in accordance with these Terms of Reference shall be valid.

9. Copies of any communication from a party to the sole arbitrator shall be sent to the other party and to the ICC Secretariat. Submissions to the sole arbitrator shall be made by fax and/or email, with a hard copy to follow by mail or courier. Ordinary correspondence may be submitted by fax and/or email alone.

III. THE CONTRACT AND THE ARBITRATION AGREEMENT

10. The dispute between the parties arises in connection with a Sales/Purchase Contract (No. UY-C-180908) dated 18 September 2008 (the "**Contract**"), which was amended by Addendum # 1, dated 22 September 2008 (the "**Addendum**").

11. Article 14.11 of the Contract contains the following arbitration clause:

> All disputes arising from or respectively in connection with this contract, except those involving cargo loss or damage, [sic] to be arbitrated by an arbitration court located in New York. No arbitration clause in this contract or seller's charter party to apply to claims for cargo loss or damage; any such claims shall be brought in the United States District Court for the Southern District of New York, to which sellers and vessel owners consent. This contract shall be governed by New York law.

12. Following a failure by the parties, each acting through counsel, to agree upon a specific arbitration forum, the matter was submitted by Claimant to the United States District Court for the Southern District of New York, which, by Order dated 16 November 2010, and judgment dated 17 November 2010, appointed the ICC's International Court of Arbitration as the arbitration court for resolution of this dispute.

13. Per the arbitration clause cited above, the applicable rules of law are the laws of the State of New York.

14. The *ICC Rules of Arbitration* in force from 1 January 1998 (the "**ICC Rules**") govern these proceedings.

IV. OVERVIEW OF THE PROCEEDINGS TO DATE

15. The arbitration was commenced by the filing with the ICC on 25 March 2011 of Claimant's Request for Arbitration dated 18 March 2010 [sic] with Exhibits A to C (the "**Request for Arbitration**" or "**Request**"), in accordance with Article 4 of the ICC Rules.

16. Respondent filed an Answer to the Request, dated 3 May 2011, with Exhibits 1 to 6 (the "**Answer**"), in accordance with Article 5 of the ICC Rules.

V. SUMMARY OF THE PARTIES' RESPECTIVE CLAIMS

A. *Claimant's Summary*

17. Claimant, as seller, and Respondent, as purchaser, entered into a written Sales/Purchase Contract (No. UY-C-180908), dated September 18, 2008 (the Contract), which was amended by Addendum #1, dated September 22, 2008 (the Addendum). Among other things, the Contract, as amended, provided for (a) Respondent's purchase from Claimant of a specified amount of prime newly-produced deformed reinforcing steel bars for concrete purposes (hereinafter referred to as the "**Cargo**"), (b) shipment of the Cargo from Turkey to the United States on or before October 15, 2008, and (c) payment in U.S. dollars, CFR FO CQD, duty paid Wilmington, Delaware, USA, in accordance with Incoterms 2000. The Contract also provided that payment by Respondent was to be arranged via an irrevocable and confirmed documentary Letter of Credit (hereinafter referred to as the "**Letter of Credit**"), 100% payable at sight, which was to be applied for by

Respondent on or before September 19, 2008, for issuance to Fortis Bank A.S., Merkez Branch ("**Fortis Bank**"), with Claimant as beneficiary.

18. Claimant timely fulfilled its responsibility to arrange for shipment, with the Cargo loading onto M/V "Supertramp" on or before October 15, 2008. On October 16, 2008, Claimant duly furnished necessary documentation prescribed by the Letter of Credit (the "**Documents**") to the issuing bank, BNP Paribas (Suisse) SA ("**BNP Paribas**").

19. On or about October 20, 2008, while the Cargo was en route from Turkey to the United States, BNP Paribas for the first time raised an objection to part of the Documents, contending that there were certain, non-material discrepancies with the technical requirements in the Letter of Credit. Claimant did not learn of that technical objection to the Documents until October 27, 2008, whereupon Claimant corrected the cited discrepancies and resubmitted the Documents to BNP Paribas. However, the Letter of Credit had, by its terms, expired on October 25, 2008.

20. On or about November 5, 2008, following arrival of the vessel containing the Cargo in the Port of Wilmington, Delaware, USA, BNP Paribas, based on instructions it had received from Respondent, offered to accept the Documents, but only in exchange for Claimant's agreement to renegotiate the Contract with a drastically reduced purchase price for the Cargo. It does not appear coincidental that, during the approximately one-month period between the parties' execution of the Contract and Addendum and the date that the Cargo was loaded onto M/V "Supertramp" for shipment, world-wide market prices for the type of steel bars included in the Cargo had declined sharply. Although Respondent had no right under the Contract, or under applicable law, to demand any reduction to the purchase price, it did so by using purported deficiencies in the Letter of Credit as a pretext, clearly in an effort to avoid the consequences of the market decline.

21. Claimant did not respond to Respondent's request for a reduction in the purchase price under the Contract, and Respondent, in breach of the Contract, indicated its refusal to accept delivery of the Cargo. At no time did Respondent raise any objection to the Cargo itself, which was, in fact, in full compliance with the relevant characteristics prescribed in the Contract, as amended.

22. By letter dated November 6, 2008, transmitted via fax to Respondent's New Jersey and New York offices, Claimant confirmed that the vessel containing the Cargo had arrived and berthed at the Port of Wilmington, Delaware, USA, ready to discharge, and Claimant objected to Respondent's having used the contention of "minor discrepancies" in the Letter of Credit as a pretextual excuse to refuse to discharge, or to accept delivery of, the Cargo. This excuse was entirely without merit, inasmuch as the issuance or non-issuance of the Letter of Credit was solely a function of the manner in which Respondent was to effectuate payment under the Contract. Under no

circumstances would its issuance or non-issuance affect Respondent's contractual payment obligation. For example, Paragraph 11.00 of the Contract gave *Claimant* the right to cancel the Contract in the event that the Letter of Credit was not issued, but Respondent was given no such right.

23. As a result of Respondent's refusal to accept delivery of the Cargo, Claimant found an alternative buyer for the Cargo, but at a sale price that was $891,065.88 less than the amount that Respondent has promised to pay under the Contract. As a result, the damages being sought by Claimant in this proceeding is the sum of $891,065.88, plus interest and expenses of the arbitration.

B. *Respondent's Summary*

24. The claim arises as a result of Claimant [redacted] failure to appreciate the role of a letter of credit governed by the Uniform Customs and Practice for Documentary Credits (UCP) in an international sale of goods. Claimant erroneously believes that this dispute involves Aceminor's refusal to take delivery and pay for a shipment of goods pursuant to a contract of sale. Yet, Claimant has admitted that it failed to present documents to the bank that strictly conformed to the terms and conditions of the letter of credit. As such, Claimant has no viable claim against Aceminor because of Claimant's failure to comply with the terms of the letter of credit.

25. [redacted]r, as buyer, and Claimant, as seller, entered into a contract for the sale and purchase of "Prime Newly Produced Deformed Reinforcing Steel Bars for Concrete Purposes". The terms were: *"810 USD/mts CFR FO CQD Duty Paid Wilmington, Delaware, USA, according to Incoterms 2000"* for shipment from Turkey to Wilmington, Delaware. (*See* Contract dated September 18, 2008 and Addendum dated September 22, 2008). Payment for the goods was to be made by "irrevocable and confirmed documentary Letter of Credit", issued by [redacted]'s bank, BNP Paribas, on September 19, 2008. The Letter of Credit expressly required that Claimant present within 10 days after shipment but before expiry (October 25, 2008) documents strictly conforming to the instructions in the Letter of Credit. Claimant accepted the Letter of Credit as issued and proceeded to ship the goods identified under the Contract.

26. On October 20, 2008, Claimant, through its bank, Fortis Bank. A.S., presented documents to BNP Paribas. (*See* Fortis Bank Advice of Payment dated October 20, 2008). The documents were discrepant and did not strictly comply to the instructions contained in the Letter of Credit. As a result of the non-conformity of Claimant's documents, BNP Paribas rejected them in accordance with Article 16 of UCP600. (*See* Rejection by BNP Paribas). BNP Paribas then advised Fortis Bank (Claimant's bank) that it rejected the documents presented based on the following discrepancies:

- The Non Negotiable Bills of Lading were not signed as per special condition G.

- Inspection Certificate issued at loading "does not detail any packing, no colour composition of the goods stated and it does not mean anything just to mention "We confirm that the loaded quantity, total number of bundles, packing, color codes and the quality and chemical composition of the goods".

- No shipment advice had been sent.

- Master's agent's certificate does not refer to quantity or goods shipped.

- Shipper's certificate for dunnage does not refer to quantity shipped.

(*See* Rejection by BNP Paribas). As a result of these significant discrepancies in the documents, [redacted] had no way to establish whether Claimant loaded goods of either the quality or quantity as mandated by the sales contract.

27. Nonetheless, [redacted] (through its bank, BNP Paribas) had the documents put on hold to enable Claimant to correct the discrepancies and to present conforming documents. Claimant concedes, however, that it did not present conforming documents before the October 25, 2008 expiry of the Letter of Credit. Nor did Claimant timely request or obtain a waiver of the discrepancies from Aceminor. As such, BNP Paribas was contractually obligated pursuant to the terms and conditions of the Letter of Credit not to release funds to Claimant or to Fortis Bank. Pursuant to the contract of sale, the Letter of Credit was required to have been "irrevocable and ***confirmed***" by Claimant's bank, which would have obligated Fortis Bank to pay Claimant, unless it rejected the documents. Claimant has not provided information concerning whether Fortis Bank paid it under the confirmed Letter of Credit.

28. On November 5, 2008, [redacted] offered to accept the shipment despite the significant non-conformities if Claimant agreed to discount the price of the goods by $300/mt. Two days later, Claimant agreed, on November 7, 2008, to only offer a discount of $150/mt, but oddly provided only one hour for acceptance of its proposal. This counter-offer was transmitted via banking channels after business hours and therefore Aceminor did not learn of the counter-offer until after the one-hour deadline imposed by Claimant had already expired. Then, to further complicate the matter, Claimant did not discharge the shipment in Wilmington, Delaware as required by the bill of lading. This would have provided [redacted] with an opportunity to inspect the goods, but instead Claimant diverted the cargo to Jacksonville, Florida for reasons only known to Claimant.

VI. ISSUES TO BE DETERMINED

29. The issues to be determined by the sole arbitrator are those arising from the submissions, statements, applications and pleadings of the parties and include any question of fact or law that the sole arbitrator may deem necessary to decide in order to determine such issues within the limits of Article 19 of the ICC Rules. The issues as framed by the parties are set out below.

A. *Issues as Framed by Claimant*

30. Claimant frames the issues to be determined as follows:

a. Did Claimant comply with its responsibilities under the Contract (as amended by the Addendum) to furnish complying product, and to make that product available for Respondent at the agreed-upon port of discharge?

b. Did the failure on the part of BNP Paribas to honor the Letter of Credit justify Respondent's cancellation of the Contract, or relieve Respondent of its obligation to accept delivery of the Cargo and to pay to Claimant the agreed-upon purchase price reflected in the Contract (as amended by the Addendum)?

c. Did Respondent breach the Contract by failing to accept delivery of the Cargo and failing to pay to Claimant the purchase price reflected in the Contract (as amended by the Addendum)?

d. Was Claimant justified in mitigating its damages by finding an alternate buyer for the Cargo?

e. Did Claimant ultimately sell the Cargo at a loss relative to the purchase price set forth in the Contract (as amended by the Addendum) in the sum of $891,065.88?

f. Is Respondent liable to Claimant for damages in the sum of $891,065.88, plus interest and expenses of this arbitration proceeding?

B. *Issues as Framed by Respondent*

31. Respondent frames the issues to be determined as follows:

a. Whether Claimant demanded arbitration against the incorrect party. A claim for wrongful dishonour of a letter of credit is properly lodged against the bank issuing the letter of credit, here, BNP Paribas, and not against the purchaser of the goods under the sales contract.

b. Whether Claimant is entitled to any relief in light of the fact that it presented non-conforming documents to BNP Paribas.

c. Whether Claimant's presentment of non-conforming documents to BNP Paribas entitles it to a claim against Aceminor, the commercial buyer.

d. Whether Claimant failed to correct the discrepancies or present conforming documents before expiry of the Letter of Credit.

e. Whether Claimant suffered any damages or failed to mitigate damages.

VII. FULL NAME, DESCRIPTION AND ADDRESS OF THE SOLE ARBITRATOR

32. The sole arbitrator, confirmed by the Secretary General of the ICC International Court of Arbitration on 4 July 2011. upon the proposal of the Canadian National Committee, is:

[redacted]
Tel.: +1 514 847 4818
Fax: +1 514 286 5474
Email: martin.valasek@nortonrose.com

VIII. THE PLACE OF ARBITRATION

33. The arbitration clause provides, in relevant part, for arbitration "*by an arbitration court located in New York.*" In its Request, Claimant proposed "*New York, NY, U.S.A.*", as the place of arbitration. In its Answer, Respondent agreed with Claimant's proposal. Accordingly, New York City (U.S.A.) shall be the place of arbitration.

IX. PARTICULARS OF THE APPLICABLE PROCEDURAL RULES, AND OTHER MATTERS

34. The parties agree that the sole arbitrator has been properly and validly appointed, and hereby confirm that neither party is aware of any ground to challenge the appointment of the sole arbitrator.

35. The arbitration clause does not specify the language of arbitration. In its Request, Claimant proposed English as the language of arbitration. In its Answer, Respondent agreed with Claimant's proposal. English shall therefore be the language of the arbitration. Accordingly, documents submitted to the sole arbitrator in any other language shall be accompanied by a translation into English. The parties will make good faith efforts to agree on the translation of such

documents. Witnesses may give oral evidence in their mother tongue, provided that arrangements for interpretation to the satisfaction of the sole arbitrator are made by the party calling the witnesses in question.

36. Subject to any mandatory rules of law of New York relating to international arbitration procedure and any relevant provisions of the ICC Rules (in particular Article 15 and Articles 20(1) and 20(2)), the rules of procedure to be followed shall be as determined by the sole arbitrator in his discretion, after consultation with the parties. In determining such rules, the sole arbitrator may refer to the *IBA Rules on the Taking of Evidence in International Arbitration (2010)*.

37. The sole arbitrator may hold one or more preparatory conferences to consider such matters as he considers expedient to deal with by way of such conferences.

38. Neither party shall object to any reasonable extension of time which the sole arbitrator may ask the International Court of Arbitration to grant in relation to the time-limit within which he must render an Award.

39. The sole arbitrator shall not act as *amiable compositeur*.

40. Amounts paid to the sole arbitrator do not include value added taxes (VAT) or other taxes or charges and imposts applicable to the sole arbitrator's fees. Parties have a duty to pay taxes or charges; however, the recovery of any such taxes or charges is a matter between the sole arbitrator and the parties. To the extent that VAT or other taxes or charges might be due on the sole arbitrator's fees under applicable tax rules, the parties hereby undertake their liability to pay such taxes or charges upon request and submission of an invoice that shall be addressed to them by the sole arbitrator.

BNP PARIBAS
CORPORATE & INVESTMENT BANKING

O/Ref LCIM5737681
Y/Ref

O/Contact AC5/P. GAFNER
(058)2125394

Y/Contact

[redacted]

Basel, November 14, 2008

IMPORT DOCUMENTARY CREDIT
- DEBIT ADVICE

Form	**Irrevocable**
By order and for account of	**Yourselves**
In favour of	[redacted] **ISTANBUL**
L/C amount	**USD 2'024'947.35 +0/-10%**
Validity	**October 25, 2008**

Dear Sir or Madam,

As per your instructions dd 11.11.2008 we have returned documents for USD 2'004'898.23 to Fortis Bank AS, Gayrettepe-Istanbul and close the above mentioned file.

We debit you as follows:

To the debit of your account No 85312/1J

Handling, fax, phone and sundry charges		**USD**	**170,00**
Special courier charge		**USD**	**110,52**
Total	**Value : November 14, 2008**	**USD**	**280,52**

Yours truly,
BNP PARIBAS (SUISSE) SA

A. Cantoni **P. GAFNER**

This credit is subject to the 'Uniform customs and practice for Documentary credits' adopted by the International Chamber of Commerce, Paris. Publication 600

24430028 LCIM5737681-0005

BNP PARIBAS
CORPORATE & INVESTMENT BANKING

BY DHL

FORTIS BANK A.S.
(MERKEZ SUBE ASMA KATI)
KURUMSAL BANKACILIK OPERASYON
YILDIZ POSTA CAD. NO: 54
34353 GAYRETTEPE-ISTANBUL
TURKEY

O/Ref LCIM5737681/CASN
Y/Ref 0677210800143

O/Contact AC5/P. GAFNER
(058)2125394
Y/Contact CIB Operation

50262-5

Basel, November 14, 2008

RETURN OF DOCUMENTS

Dear Sir or Madam,

We refer to your and our various swift messages and our definite refusal of documents. In line with UCP Art. 16 e and your instructions by MT799 dated 13.11.2008 we return to you, at our full discharge, the following documents for USD 2'004'898.23:

Commercial Invoice	1or 2cc
Bills of Lading	3/3or + 6nnc
Packing List	1or 2cc
Certificate of Origin	1or 2cc
Mill's Test Certificate	1or 2cc
Inspection Certificate	1or 2cc
Beneficiary's Shipping Advice	1cc
Transmission Reports	1or
Certificate from Master Agents	1or
Shipper's Certificate for Dunnage	1or

Unfortunately we are unable to endorse the bills of lading as per your request, as the documents have been refused in the frame of the credit and must be therefore returned 'as received', without any alteration.

We have closed our file.

Yours truly,
BNP PARIBAS (SUISSE) SA

FILE COPY

24430029 LCIM5737681-0009

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