

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

Vienna, Austria  
April 2 to 8, 2004

Organized by:

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

and

**FIRST ANNUAL  
WILLEM C. VIS (EAST)  
INTERNATIONAL  
COMMERCIAL ARBITRATION MOOT**

Hong Kong  
March 18 to 21, 2004

Organized by:

**The Chartered Institute of Arbitrators (East Asia Branch)**  
Hong Kong International Arbitration Centre  
38/F, Two Exchange Square  
Central, Hong Kong SAR

And

**City University School of Law  
83 Tat Chee Avenue  
Kowloon Tong, Kong Kong SAR**

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**THE PROBLEM**

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Joseph Langweiler  
Lawyer  
14 Capitol Boulevard  
Oceanside, Equatoriana

10 February 2003

Mr. Ang Yong Tong  
Registrar  
Singapore International Arbitration Centre  
3 St Andrew's Road  
Third Level City Hall  
Singapore 178958

Dear Mr. Ang:

I represent Equapack, Inc. which, pursuant to Rule 3 of the Arbitration Rules of the Singapore International Arbitration Centre (SIAC Rules), hereby submits its Notice of Arbitration against Medi-Machines, S.A. in the requisite number of copies. There is also enclosed a copy of the receipt showing that it has been served on Medi-Machines, S.A. as provided in Rule 3.1.

Payment will be made for the administrative costs and the provisional advance on the arbitrator's costs as provided in Rule 27 upon receipt of your invoice.

Sincerely,

(Signed) \_\_\_\_\_  
Counsel  
Equapack Inc.

Encl: Notice of Arbitration with Exhibits  
Courier receipt

Singapore International Arbitration Centre (SIAC)

Notice of Arbitration

Equapack, Inc. Claimant

v.

Medi-Machines, S.A.  
Respondent

The Claimant, Equapack, Inc., hereby demands that the dispute between it and the Respondent, Medi-Machines, S.A. that is set forth below be submitted to arbitration under the SIAC Arbitration Rules, as provided in the contract between them.

STATEMENT OF CASE

I. Parties

1. Equapack, Inc. is a corporation organized under the laws of Equatoriana. It has its principal office at 345 Commercial Ave., Oceanside, Equatoriana. The telephone number is (0) 555-1235 and the fax number is (0) 555-1237. Equapack is in the business of packaging many different types of goods for other companies. A small part of the business has been re-packaging bulk commodities into retail packs for chains of stores who wish to market "own brand" products.

2. Medi-Machines, S.A. is a corporation organized under the laws of Mediterraneo. It has its principal office at 415 Industrial Place, Capitol City, Mediterraneo. The telephone number is (0) 487-2314 and the fax number is (0) 487-2320. Medi-Machines is a manufacturer of machinery, including dry foods packaging equipment.

3. The packaging machines are continuous packaging machines, each comprising a weighing unit directly mounted over a vertical bag form-fill-seal unit that creates bags from plastic film, fills them with the weighed product, and seals them. The fill-form-seal unit is capable of producing a wide variety of package styles (including re-sealable zippers) and sizes using a broad range of film types.

II. Facts

4. Equapack had been packing small quantities of products such as tea, coffee, rice, sugar and the like with older machines for some time. It had never been called upon to pack salt and did not know and had no reason to know that salt raised concerns different from those of any other product. In anticipation of a large contract from A2Z, Inc., a chain of retail food stores with which they had had no previous commercial relationship, on 24 June 2002 Mr. Donald Swan, Works Manager of Equapack, wrote Medi-Machines inquiring into the possibility of purchasing several

new machines to pack dry commodities into retail packages of 500 grams to one kilogram. (Claimant's Exhibit No. 1).

5. Mr. Stefan Drake, a salesman for Medi-Machines, answered on 3 July 2002 with an offer of six Model 14 auger-feeder dry commodity packaging machines at US\$65,000 per machine. (Claimant's Exhibit No. 2) The price was satisfactory and Mr. Swan accepted the order for Equapack on 12 July 2002. (Claimant's Exhibit No. 3)

6. Although the sale was F.O.B., Medi-Machines was to arrange the shipping for the account of Equapack. On 23 July 2002 Mr. Swan telephoned Mr. Drake to inquire as to the progress in shipping the machines. Mr. Drake replied that he would check on it. He answered the inquiry by fax the following day and said that the machines were packed for ocean shipment and would be picked up by the freight forwarder the following Monday and loaded into a container for shipment the same day. The ship would be sailing later that week. (Claimant's Exhibit No. 4)

7. During the telephone conversation Mr. Swan told Mr. Drake that the machines would be used for packaging salt, as well as a range of other products. Mr. Drake did not react and specifically did not tell Mr. Swan that the machines being sent should not be used for the packaging of salt. (Claimant's Exhibit No. 5) Nor did Mr. Drake's telefax confirming the shipment date contain any suggestion that the Model 14 machines were inappropriate for packaging salt.

8. Payment for the purchase was made by means of a letter of credit. The account of Equapack, Inc. was debited on 2 August 2002. The six machines were duly delivered on 21 August 2002. They were installed and placed in service on 30 August 2002. During the following month four of the machines were used for packaging a variety of products, including salt. The other two machines were used for all products other than salt. Although the machines worked reasonably well at the beginning, they were slower for most products than had been Equapack's previous experience with similar machines. By the end of the month the machines that had been used to pack salt were showing serious signs of corrosion and could be used only with coarser products, such as coffee beans or rice, and those at a greatly reduced rate. Finer items, such as ground coffee would not pass at all. Furthermore, since the machines were packaging foodstuffs, there was concern that the food itself might become contaminated and it was decided that they should no longer be used.

9. On 18 October 2002 Mr. Swan telephoned Mr. Drake to tell him of the corrosion. Mr. Drake asked what products the machines had been used for and when Mr. Swan told him the list, including salt, Mr. Drake replied that the machines were not designed to be used for salt. He said that, since salt is so corrosive, machines intended for the packaging of salt must be made of stainless steel. Mr. Swan reminded Mr. Drake that he had told him in the telephone call of 23 July 2002, that is before the machines had been shipped, that the machines would be used for packaging salt, and that Mr. Drake had not told him that the machines would be ruined by doing so. Mr. Drake replied that he did not remember any such statement by Mr. Swan. Mr. Swan insisted that the statement had been made, that Medi-Machines was aware of the use to which the machines would be put before they were shipped to Equapack and that the deterioration in the machines was the responsibility of Medi-Machines. The

content of this conversation was essentially repeated in letters exchanged between Mr. Swan and Mr. Drake. (Claimant's Exhibits Nos. 6 and 7)

10. In his letter of 19 October 2002 Mr. Swan went further and declared avoidance of the contract. He offered the packaging machines back to Medi-Machines. (Claimant's Exhibit No. 6) Mr. Drake, in his letter of 27 October 2002, did not refer to the declaration of avoidance. (Claimant's Exhibit No. 7)

11. Subsequent to the above-referenced exchange of correspondence there have been no further written communications between the two firms. There have been several attempts by telephone to settle the dispute, but Medi-Machines has adamantly refused to discuss any settlement. The six Model 14 machines have been put into storage awaiting the decision of Medi-Machines as to what they wish to do with them.

12. Because of the inability to use any further the Model 14 packaging machines purchased from Medi-Machines, Equapack was forced to purchase new machines from Oceanic Machinery, GmbH at a substantially higher price. Two auger-feeders capable of packaging salt cost US\$125,000 each while four auger-feeders for all other products cost US\$75,000 each. Shipping and customs cost an additional US\$45,500. During the period of two months when Equapack was unable to service the contract for which the packaging machines had been purchased from Medi-Machines, Equapack lost US\$42,000 in revenue.

### III. Arbitration clause, applicable law

13. Paragraph 15 of Medi-Machines' General Conditions of Sale, which were incorporated into the contract, provide

15. Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Vindobona, Danubia in accordance with the Arbitration Rules of Singapore International Arbitration Centre ("SIAC Rules") for the time being in force which rules are deemed to be incorporated by reference to this clause.

The Tribunal shall consist of three arbitrators.

The governing law of the contract shall be the United Nations Convention on Contracts for the International Sale of Goods (CISG). All matters not governed by the Convention shall be governed by such rules of international commercial law deemed appropriate in the circumstances.

The language of the arbitration shall be English.

14. Danubia has adopted the UNCITRAL Model Law on International Commercial Arbitration without amendment. Danubia, Equatoriana and Mediterraneo are all party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

#### IV. Legal Conclusions

15. a) The six Model 14 auger-feeder packaging machines were not “of the ... quality ... required by the contract” as called for by CISG, article 35(1) in that Mr. Drake in his letter of 3 July 2002 (Claimant’s Exhibit No. 2) stated that the Model 14 machines would be the appropriate machines to purchase for use in packaging “a wide range of products” with no expressed limitation in regard to salt.

b) The six Model 14 auger-feeder packaging machines were not “fit for the purposes for which goods of the same description would ordinarily be used”, as called for by CISG, article 35(2)(a), in that they could not pack the full range of coarse and fine bulk commodities into retail packages.

c) The six Model 14 auger-feeder packaging machines were not fit for the particular purpose of packaging salt even though Medi-Machines knew that they would be used for that purpose prior to shipping the machines. Although Equapack did not know and had no reason to know that this was a special purpose, Medi-Machines did know that the Model 14 machines were not appropriate for packaging salt. As a manufacturer of such equipment it had special knowledge that was not had by Equapack. It neither inquired of Equapack at the time of contracting whether the machines might be used for packaging salt nor reacted when it found out that they would be used for packaging salt.

d) The six Model 14 auger-feeder packaging machines were not “of the ... quality ... required by the contract” as called for by CISG, article 35(1) in that even at the time of delivery they did not perform at the speeds expected for an auger-feeder packaging machine.

16. The non-conformity of the six Model 14 auger-feeder packaging machines was so serious as to constitute fundamental breach as defined in CISG, article 25. Consequently, Equapack had the right to avoid the contract pursuant to CISG, article 49(1)(a) and did so by the letter of Mr. Swan, dated 19 October 2002. (Claimant’s Exhibit No. 6)

#### V. Relief Requested

17. The Claimant, Equapack requests the Tribunal to find that the Respondent, Medi-Machines, has breached the contract between them formed by the exchange of letters of 3 July 2002 and 12 July 2002 in that the Model 14 auger-feeder packaging machines delivered were not in conformity with the contract; that the non-conformity constituted fundamental breach and that the contract was avoided by Equapack.

18. The Claimant, Equapack, also requests the Tribunal to find that the Respondent, Medi-Machines, should pay to the Claimant the total of US\$537,650 consisting of:

- a) reimbursement of the purchase price of US\$390,000;
- b) reimbursement of the shipping charges of US\$850;
- c) reimbursement of the customs duties paid of US\$39,300;
- d) damages amounting to US\$107,200 reflecting the increased cost of the replacement goods (US\$60,000), the increased amount of customs duties paid on the replacement goods (US\$5,700), the loss of revenue

(US\$42,000) less the decreased cost of transportation of the goods  
(US\$200).

19. The Claimant, Equapack, also requests the Tribunal to order the Respondent to pay:

- a) interest at the prevailing market rate in Equatoriana on the said sum from 2 August 2002 to the date of payment to Equapack;
- b) all costs of arbitration, including costs incurred by the parties.

(Signed)  
Counsel

10 February 2003

Claimant's Exhibit No. 1

Equapack, Inc.  
345 Commercial Ave.  
Oceanside, Equatoriana  
Tel. 555-1235  
Fax 555-1237

24 June 2002

Medi-Machines, S.A  
415 Industrial Place  
Capitol City, Mediterraneo

Dear Sirs:

We anticipate the possibility of being in the market for up to six machines capable of packaging dry bulk commodities into retail packages of 500 grams to 1 kg. The machines could be expected to be used over a wide range of products, both fine goods, such as ground coffee or flour, and coarser goods such as beans or rice.

I should like to know what you might be able to offer us, including the price and the delivery terms. Both price and prompt delivery would be essential elements of our purchasing decision.

Sincerely yours,  
(Signed)  
Donald Swan  
Works Manager

Claimant's Exhibit No. 2

Medi-Machines, S.A  
415 Industrial Place  
Capitol City, Mediterraneo  
Tel. 487-2314  
Fax 487-2320

3 July 2002

Mr. David Swan  
Works Manager  
Equapack, Inc.  
345 Commercial Ave.  
Oceanside, Equatoriana

Dear Mr. Swan:

Thank you for your inquiry of 24 June 2002. We are, as you are undoubtedly aware, a premier manufacturer of equipment for the food packaging industry. Our packaging machines have always delivered complete satisfaction to our customers.

If you plan to use the machines over a wide range of products, as you have stated, you will wish to purchase auger-feeder machines. You would need auger-feeders for the fine products. Auger-feeders can also be used to pack coarser items such as beans or rice, though they are slower at doing so than are multi-head weighers. As you are also undoubtedly aware, multi-head weighers are considerably more expensive than are auger-feeders.

I can offer you six of our Model 16 auger-feeder machines. This is our newest model introduced this year and it has been a favorite with every one of our customers. The price is US\$75,000 per machine. Because of the great demand for them, there would be a two-month delay before we would be able to ship.

There is another possibility that might better meet your need for prompt delivery and desire for as good a price as possible. I could offer you six of our Model 14 auger-feeder packaging machines. This model was first introduced in 2000 and was also one of our top products. It has been discontinued in favor of the Model 16, but I am sure that you would be more than satisfied with it. Because it is a discontinued model, I am able to offer you a special price of US\$65,000 per machine with immediate shipment for a minimum order of six machines. We have only a limited number available, so I encourage you to order promptly if you would be interested.

You will find enclosed a copy of our general conditions of sale. You will note in particular that all sales are F.O.B. or F.C.A. (Incoterms 2000) Naturally, we would be pleased to arrange for the shipping for you. You could expect the shipping costs to be under US\$1,000.

I look forward to receiving your order.

Sincerely,

(Signed)  
Stefan Drake  
Salesman

Medi-Machines, S.A

GENERAL CONDITIONS OF SALE  
INTERNATIONAL SALES

(Extract – only the relevant clauses are reproduced)

3. All price quotations F.O.B., if maritime shipment is anticipated, or F.C.A., if land or air shipment. (INCOTERMS 2000)

4. The price of all international contracts for more than USD 50,000 must be payable by letter of credit opened with a first class bank in favor of Medi-Machines, S.A., payable at Mediterraneo Commercial and Industrial Bank.

\* \* \*

15. Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Vindobona, Danubia in accordance with the Arbitration Rules of Singapore International Arbitration Centre (“SIAC Rules”) for the time being in force which rules are deemed to be incorporated by reference to this clause.

The Tribunal shall consist of three arbitrators.

The governing law of the contract shall be the United Nations Convention on Contracts for the International Sale of Goods (CISG). All matters not governed by the Convention shall be governed by such rules of international commercial law deemed appropriate in the circumstances.

The language of the arbitration shall be English.

Claimant's Exhibit No. 3

Equapack, Inc.  
345 Commercial Ave.  
Oceanside, Equatoriana  
Tel. 555-1235  
Fax 555-1237

12 July 2002

Mr. Stefan Drake  
Medi-Machines, S.A.  
415 Industrial Place  
Capitol City, Mediterraneo

Re: Yours of the 3 July 2002

Dear Mr. Drake:

Thank you for your prompt reply to my inquiry. The contract for which we anticipated the need of additional equipment has been signed. Therefore, prompt delivery of the new packaging machines is urgent.

I am therefore authorized to order from you six Model 14 dry stuff packaging machines. We would appreciate it if you were to arrange for the shipment to us. A letter of credit for US\$430,000 in favor of Medi-Machines, S.A. will be opened with Equatoriana Commercial Bank payable at Mediterraneo Commercial and Industrial Bank.

If there is anything further that you need from me to effectuate the delivery, please let me know.

I remain

Sincerely yours,

(Signed)  
Donald Swan  
Works Manager

Claimant's Exhibit No. 4

Medi-Machines, S.A  
415 Industrial Place  
Capitol City, Mediterraneo  
Tel. 487-2314  
Fax 487-2320

24 July 2002

Mr. David Swan  
Works Manager  
Equapack, Inc.  
345 Commercial Ave.  
Oceanside, Equatoriana

By telefax

Dear Mr. Swan:

It was a pleasure speaking to you yesterday.

In regard to your inquiry as to the status of your order for six No. 14 auger-feeder dry commodity packaging machines, the machines are packed for ocean shipment. Fast Freight Forward, which is the firm of freight forwarders that we use for international shipments, has informed me that they expect to pick up the machines and load them into a container next Monday. The ship should be sailing later that week. As soon as we have the bill of lading we will process the demand for payment under the letter of credit so that you will have all the documents you need for unloading and customs clearance by the time the ship arrives.

I wish to express once again our pleasure in serving you.

Sincerely,  
(Signed)  
Stefan Drake  
Salesman

Claimant's Exhibit No. 5

Witness Statement  
Mr. Donald Swan  
Works Manager, Equapack, Inc.

I am the Works Manager for Equapack, Inc. Equapack is a company that packs various types of goods for other companies. A small part of the operation in the past had been the packaging of bulk commodities, almost all of which were beans of various types, into retail sized packages. It had not been a significant part of our business. In my capacity as Works Manager I have been responsible for supervising the packing processes in the firm.

In June 2002 we received an inquiry from a chain of retail food stores in Equatoriana named A2Z, Inc. as to whether we would be able to pack various bulk commodities into packages of 500 grams to 1 kilogram. The amount they were interested in was substantially beyond our capacity. Consequently, on 24 June 2002 I wrote Medi-Machines, S.A., which I knew to have a good reputation as a manufacturer of packaging machines of the type we would need.

Mr. Stefan Drake, a salesman for Medi-Machines, offered us six Model 14 auger feeder packaging machines at a very reasonable price. The price was so reasonable because the Model 14 had been discontinued in favor of their Model 16. We were not concerned about the fact that the machines offered were a discontinued model. What was of most importance to us was that the machines were immediately available and that the price was reasonable. By that time we had signed a contract with A2Z and we were obligated to commence packaging for them within a short time. Consequently, on 12 July 2002 I wrote Mr. Drake that we would be purchasing their machines.

Although the contract was F.O.B., Medi-Machines was to handle the shipping for us. I expected to hear from Mr. Drake within a few days as to just when the machines would be shipped or when we could expect them to be delivered. Since I had not heard from him, on 23 July 2002 I telephoned Mr. Drake. He said that he was not sure but that he would find out and let me know as soon as possible. Mr. Drake did send me a fax the following day in which he said that the machines were ready for shipment and that they would be picked up by the freight forwarder for shipment the following Monday.

During my conversation with Mr. Drake I told him that A2Z wanted us to pack a wide range of products, and that salt would be included. Neither Equapack nor I had had any experience with packaging salt in the past and did not realize that it was so corrosive that special machines would be needed. Mr. Drake did not react to what I told him about packaging salt and certainly did not tell me that the machines would soon become unusable if we used them to pack salt. The fax from Mr. Drake did not mention anything about it.

It should be possible to confirm just what was said between us because I think that the conversation with Mr. Drake was taped by Medi-Machines. At least, when I called there was a recorded message before anyone answered the telephone that said that the

call might be recorded to assure customer satisfaction. It would have given more customer satisfaction if they had sold us the proper type of machines.

(Signed)

15 January 2003

Claimant's Exhibit No. 6

Equapack, Inc.  
345 Commercial Ave.  
Oceanside, Equatoriana  
Tel. 555-1235  
Fax 555-1237

19 October 2002

Mr. Stefan Drake  
Medi-Machines, S.A  
415 Industrial Place  
Capitol City, Mediterraneo

Dear Mr. Drake:

This is to confirm what I told you in our telephone conversation of yesterday. In my original letter of 24 June 2002 inquiring in regard to the possibility of purchasing packaging machines from Medi-Machines, I wrote that the machines could be expected to be used over a wide range of products, both coarse and fine. In your letter of 3 July 2002 responding to my inquiry you stated that we would need an auger-feeder because it could pack both coarse and fine goods. You did not say that there were any products for which the machines you proposed should not be used.

When I telephoned you on 23 July 2002 in order to inquire about the shipping date, I specifically told you that one of the products that would be packed using the machines was salt. You did not tell me that the machines could not be used for packaging salt. Moreover, when you replied to the inquiry by telefax the following day, you did not even mention salt.

We cannot use the machines, literally cannot use them. There is corrosion that is sufficient to cause the product to block and cause outages when we try to package any products. Before it reached that stage, the corrosion made it impossible to clean the feeding surfaces properly, which is a serious matter when handling foodstuffs.

If you want the machines, they are yours and we would appreciate it if you would arrange to have something done with them. We will have to purchase replacement machines from some other source and we need to have the space. Furthermore, we expect you to reimburse us the purchase price as well as all the other expenses this entire fiasco has caused us.

Sincerely,  
(Signed)  
Donald Swan  
Works Manager

Claimant's Exhibit No. 7

Medi-Machines, S.A  
415 Industrial Place  
Capitol City, Mediterraneo  
Tel. 487-2314  
Fax 487-2320

27 October 2002

Mr. David Swan  
Works Manager  
Equapack, Inc.  
345 Commercial Ave.  
Oceanside, Equatoriana

Yours of the 19<sup>th</sup> October 2002

Dear Mr. Swan:

I can only say how sorry I am that you have had corrosion problems with the Model 14 auger-feeder packaging machines that Equapack purchased from us.

As I told you on the telephone, salt is a very special item to handle. It is highly corrosive. All of our literature and our website make it clear that machines built to pack salt, as is our Model 17, use a high-grade stainless steel. Those machines are considerably more expensive than are machines for packaging all other products.

Since salt is such a special product, we do not and cannot assume that a customer intends to pack it unless we are told so specifically. You did not do so when ordering our machines.

You have insisted that you told me that you would be using the machines to pack salt when you telephoned me to inquire when the machines would be shipped. To say the least, you were not very specific about it. Even so, I did tell you that the Model 14 machines should not be used for salt. You had wanted machines at the best price we could offer you, and that is why I suggested the Model 14 machines to you. We would not have been able to sell you machines you could have used for salt at the price you were paying for the Model 14 machines.

Even though we have no responsibility for what went wrong, we would be prepared to make a substantial concession on the purchase of our Model 17 packaging machines. I enclose our literature in regard to them. I hope you will find this to be a satisfactory solution your current situation.

Sincerely,  
(Signed)  
Stefan Drake  
Salesman



**Our Ref: Vis Moot 11 East 1**

**24 February 2003**

**To: Mr Joseph Langweiler  
Lawyer  
14 Capitol Boulevard  
Oceanside  
Equatoriana**

**By Fax No. 012-0-855-8055**

**M/s Medi-Machines, S.A.  
415 Industrial Place  
Capitol City  
Mediterraneo  
(Attn: Managing Director/ General Counsel)**

**By Fax No. 012-0-487-2320  
& A.R. Registered Post**

Dear Sirs

**Vis Arbitration Moot No. 11 East No.1 (Vis Moot 11 East 1)**  
**In the matter of an arbitration under SIAC Rules**  
**Between**  
**Equapack, Inc. (Claimants)**  
**And**  
**Medi-Machines, S.A. (Respondents)**

I am pleased to acknowledge receipt of the Claimants' Notice of Arbitration dated 10 February 2003 together with their Statement of Case and exhibits. I take this opportunity to call the parties' attention to the matters that require attention for the further conduct of this arbitration.

**Response to Notice of Arbitration and legal representation**

In accordance with Rule 4 of the SIAC Rules, the Respondents may wish to serve a Response within 14 days of their receipt of the Notice of Arbitration. The Respondents may also wish to consider engaging lawyers to represent them in this arbitration. The SIAC Rules can be downloaded from SIAC's website ([www.siac.org.sg](http://www.siac.org.sg)) under the heading "Lawyer's Workbench"

**Appointment of arbitrators**

The contract between the parties provides for the appointment of three arbitrators. In accordance with Rule 8, each party appoints one arbitrator, and the two party-

appointed arbitrators appoint the presiding arbitrator. The time limits for such appointments are set out in that Rule.

When making such appointments, parties only need to ascertain the proposed appointee's availability. It is not necessary, or appropriate, for a party to negotiate the terms of appointment with the person it intends to appoint.

For case administration purposes, appointments by parties are treated as nominations. On receipt of the appointee's particulars, SIAC will conduct a conflict of interest audit as well as negotiating the terms of appointment. Upon a satisfactory conflict search and agreement on the terms of appointment, SIAC will confirm the appointment.

Appointment and confirmation of appointment of arbitrators are governed by SIAC's Practice Notes on Appointment of Arbitrators, and the management of the financial aspects of arbitration is regulated by the Practice Notes on Arbitrators' Fees. These Practice Notes can also be downloaded from SIAC's website.

### **Management fee**

SIAC charges a fee for the management of the case, based on the quantum of the claim or counterclaim. You can find the scale of management fees on SIAC's website as well.

The Claimants have quantified their claim at US\$537,650 (S\$931,586). The management fee for this claim is S\$4,988 (inclusive of GST). The first half of this fee, S\$2,494, is payable on the filing of the Claimants' Statement of Case. As the Claimants have filed their Statement of Case along with the Notice of Arbitration, this sum is now due.

If the Respondents wish to file a counterclaim, a separate management fee for the counterclaim is payable. The first half of the fee, calculated in accordance with the scale, is payable at the time of filing the counterclaim.

### **Deposit towards arbitrators' fees**

Pursuant to Rule 27, each party is requested to deposit with SIAC the sum of S\$10,000 as advance of the costs of the arbitration as defined in Rule 30 (mainly to cover the Tribunal's fees).

### **Payment of management fee and deposit**

The Claimants are accordingly requested to pay the sum of \$12,494, and the Respondents are requested to pay the sum of \$10,000, both by bank transfer **within the next 7 days**. The particulars of our bank account are as follows: -

Name of Bank : AAAA Bank (SSSS Branch)  
Address : Coleman Street, Singapore  
Account No. : 333-333333-333  
Account Name : SIAC-Deposit Account

For easy identification of the remittance, the Claimants and the Respondents are requested to include in their remittance details the reference numbers "Vis Moot 11 East 1 (C)" and "Vis Moot 11 East 1 (R)" respectively. To help us in tracking the deposits, we request the parties to send us copies of the remittance records as soon as funds are transferred.

### **Communications**

For convenience, we request that the parties correspond with each other and the SIAC by fax. All communications between a party and the Centre should be copied to the other party.

### **Further conduct of this case**

The Claimants should let us know whom they have appointed as an arbitrator as soon as possible. Within 21 days thereafter, the Respondents should notify their appointment. Should either party not wish to make any appointment and prefer to leave it to the SIAC to make the appointment, please let us know as soon as possible.

Please do not hesitate to contact our Assistant Registrar Mr Ganesh Chandru or myself should you require any assistance.

Yours faithfully

(Signed)

**Ang Yong Tong**  
**Registrar**

Joseph Langweiler  
Lawyer  
14 Capitol Boulevard  
Oceanside, Equatoriana

5 March 2003

Mr. Ang Yong Tong  
Registrar  
Singapore International Arbitration Centre  
3 St Andrew's Road  
Third Level City Hall  
Singapore 178958En

Dear Mr. Ang:

Thank you for your letter of 24 February 2003. The amount of S\$12,494 has been transferred to the account of the Singapore International Arbitration Centre. A copy of the transfer order is enclosed.

Pursuant to article 8.1, SIAC Arbitration Rules the Claimant Equapack, Inc. appoints Mr. (Arbitrator 1), 25 Farside Road, Capitol City, Equatoriana, tel. (0) 143-2287, fax (0) 143-2290, as its arbitrator.

Sincerely,  
(Signed)  
Joseph Langweiler  
Lawyer

Cc: Medi-Machines, S.A.

Encl: Copy payment order



11 March 2003

**Mr Joseph Langweiler  
Lawyer  
14 Capitol Boulevard  
Oceanside  
Equatoriana**

**By Fax No. 012-0-855-8055**

Dear Mr Langweiler

**RE: Vis Moot 11 East 1 – IN THE MATTER OF AN ARBITRATION BETWEEN  
EQUAPACK, INC. AND MEDI-MACHINES, S.A.**

We refer your letter dated 5 March 2003.

This is to acknowledge receipt of the sum of S\$12,494 from the Claimants as advance of the costs of the arbitration (to cover the Tribunal's fees and towards SIAC's first half of management fees). The SIAC secretariat will send you an updated Statement of Deposit Account shortly.

Yours faithfully

(Signed)

**Ganesh Chandru  
Assistant Registrar**

Cc: M/s Medi-Machines, S.A.



**Our Ref: SIAC Moot 11 East 1**

**11 March 2003**

**Mr Arbitrator 1  
25 Farside Road  
Capitol City  
Equatoriana**

**CONFIDENTIAL  
By Fax No. 012-0-143-2290**

Dear Mr Arbitrator 1

**RE: SIAC Moot 11 East 1 – IN THE MATTER OF AN ARBITRATION BETWEEN EQUAPACK, INC. (EQUATORIANA) AND MEDI-MACHINES, S.A (MEDITERRANEO)**

This is an arbitration under the SIAC Rules with the place of arbitration at Vindobona, Danubia. The arbitration clause provides for the appointment of three arbitrators. We have been informed that the Claimants have appointed you as one of the arbitrators.

As you may have been told, the disputes have arisen from a contract for the sale of six Model 14 auger-feeder packing machines. The claim has been quantified at US\$ 537,650 (S\$931,586). The Claimants are represented by Mr Joseph Langweiler, Lawyer, Oceanside, Equatoriana but the Respondents are not yet represented.

### **Confirmation of appointment**

For case management purposes, parties' appointments of arbitrators are subject to confirmation by SIAC upon a satisfactory conflict of interest audit and agreement on the terms of appointment. This is provided for in SIAC's Practice Notes on Appointment of Arbitrators, which regulates the appointment of arbitrators. You can find these Practice Notes on our website ([www.siac.org.sg](http://www.siac.org.sg)) under the heading "Lawyer's Workbench". I invite you to download these Practice Notes for your record purposes.

**Conflict of interest audit**

I refer to the SIAC's Code of Ethics, which you can also find on our website. I would like to draw your attention to the Disclosure and Bias sections of the Code. Please consider whether there are any matters mentioned there which apply to you, and make all necessary disclosures.

**Fees**

Your fees and other terms of appointment will be fixed on completion of the conflict audit of all three nominees. Management of the arbitrators' fees and other financial aspects of the arbitration are regulated by SIAC's Practice Notes on Arbitrators' Fees, which you can also find on our website.

**Service Fee Payable by Arbitrators**

I refer to the section of the Practice Notes on Appointment of Arbitrators in regard to the service fee payable by arbitrators to the SIAC (Paragraphs 16 to 20). The 5% service fee will be billed when fees are paid to you, including fees paid on interim bills as well as the final bill.

**Acceptance of proposed appointment**

Upon satisfactory replies to the conflict of interest audit, we shall fix the terms of your appointment and confirm your appointment.

I look forward to hearing from you on the conflict of interest audit.

Yours sincerely

(Signed)

**Ang Yong Tong**  
**Registrar**

(Mr. Arbitrator 1)  
Advocate at the Court  
25 Farside Road  
Capitol City, Equatoriana  
tel. (0) 143-2287  
fax (0) 143-2290

27 March 2003

Mr. Ang Yong Tong  
Registrar  
Singapore International Arbitration Centre  
3 St Andrew's Road  
Third Level City Hall  
Singapore 178958

Re: Equapack, Inc. v. Medi-Machines, S.A., Vis Moot 11 East 1

Dear Mr. Ang:

I am in receipt of yours of the 11<sup>th</sup> March 2003 in which you inform me of my appointment as arbitrator in the referenced arbitration. I have downloaded the Practice Notes and the Code of Ethics to which your letter refers and I find them very helpful and informative.

I had previously been approached by Mr. Langweiler, counsel for Equapack, Inc. as to my availability to serve as arbitrator and had given him my consent to appoint me.

You have inquired whether there are any reasons to believe that circumstances exist to raise questions as to whether I could be independent and impartial in the arbitration. I should point out that Mr. Langweiler and I have known each other for a number of years through our activities in the Equatoriana Bar Association. However, other than those activities in the Bar Association, we have never had any professional or personal contact. I do not believe that those minimal contacts should give rise to any doubts as to my independence and impartiality.

Sincerely,  
(Signed)



6 March 2003

M/s Medi-Machines, S.A.  
415 Industrial Place  
Capitol City  
Mediterraneo  
(Attn: Managing Director/ General Counsel)

By Fax No. 012-0-487-2320  
& A.R. Registered Post

Dear Sirs

RE: **Vis Moot 11 East 1 – IN THE MATTER OF AN ARBITRATION BETWEEN EQUAPACK, INC. AND MEDI-MACHINES, S.A.**

We refer to our letter dated 24 February 2003.

We have not yet received the sum of S\$10,000 from you as advance of the costs of the arbitration (mainly to cover the Tribunal's fees). Please let us have the requisite payment **within the next 7 days** via bank transfer. The particulars of our bank account are repeated below:-

Name of Bank : AAAA Bank (SSSS Branch)  
Address : Coleman Street, Singapore  
Account No. : 333-333333-333  
Account Name : SIAC-Deposit Account

For easy identification of funds, you are requested to include in your remittance details the arbitration reference number "Vis Moot 11 East 1 (R)". To help us track the deposits, we request you to send us a copy of the remittance record as soon as the funds are transferred.

Yours faithfully

(Signed)

**Sylvia Beetsma**  
**Case Management Officer**

Cc: Mr Joseph Langweiler



13 March 2003

M/s Medi-Machines, S.A.  
415 Industrial Place  
Capitol City  
Mediterraneo  
(Attn: Managing Director/ General Counsel)

By Fax No. 012-0-487-2320  
& A.R. Registered Post

Dear Sirs

RE: Vis Moot 11 East 1 – IN THE MATTER OF AN ARBITRATION BETWEEN EQUAPACK, INC. AND MEDI-MACHINES, S.A.

We refer to our letter dated 24 February 2003 and to our reminder dated 6 March 2003.

We still have not received the sum of S\$10,000 from you as advance of the costs of the arbitration (mainly to cover the Tribunal's fees). Please let us have the requisite payment within the next 7 days by bank transfer. We have already given you the details of our bank account, but we repeat them as follows:

Name of Bank : AAAA Bank (SSSS Branch)  
Address : Coleman Street, Singapore  
Account No. : 333-333333-333  
Account Name : SIAC-Deposit Account

For easy identification of funds, you are requested to include in your remittance details the arbitration reference number "Vis Moot 11 East 1 (R)". To help us track this payment, we ask you to send us a copy of the remittance record as soon as you have arranged for the transfer of the funds.

Yours faithfully

(Signed)

**Sylvia Beetsma**  
**Case Management Officer**

Cc: Mr Joseph Langweiler



20 March 2003

M/s Medi-Machines, S.A.  
415 Industrial Place  
Capitol City  
Mediterraneo  
(Attn: Managing Director/ General Counsel)

By Fax No. 012-0-487-2320  
& A.R. Registered Post

Dear Sirs

RE: Vis Moot 11 East 1 – IN THE MATTER OF AN ARBITRATION BETWEEN EQUAPACK, INC. (EQUATORIANA) AND MEDI-MACHINES, S.A (MEDITERRANEO)

We refer to our letter dated 24 February 2003 and to our reminders dated 6 March 2003 and 13 March 2003.

We regret to note that you have not sent us the sum of S\$10,000 as payment for advance of the costs of the arbitration, or given us any explanation why you have not made such payment.

We call upon you again to make immediate arrangement to make the payment. The particulars of our bank account are as follows: -

|              |   |                           |
|--------------|---|---------------------------|
| Name of Bank | : | AAAA Bank (SSSS Branch)   |
| Address      | : | Coleman Street, Singapore |
| Account No.  | : | 333-333333-333            |
| Account Name | : | SIAC-Deposit Account      |

For easy identification of funds, you are requested to include in your remittance details the arbitration reference number "*Vis Moot 11 East 1 (R)*". To help us track this payment, we request you to send us a copy of the remittance record as soon as you have made arrangements to transfer the funds.

Yours faithfully

(Signed)

**Ganesh Chandru**  
**Assistant Director**

Cc: Mr Joseph Langweiler

Horace Fasttrack  
Advocate at the Court  
75 Court Street  
Capitol City, Mediterraneo  
Tel. (0) 146-9845  
Telefax (0) 146-9850

26 March 2003

Mr. Ang Yong Tong  
Registrar  
Singapore International Arbitration Centre  
3 St Andrew's Road  
Third Level City Hall  
Singapore 178958

Re: Equapack, Inc. v. Medi-Machines, S.A., Vis Moot 11 East 1

Dear Mr. Ang:

Medi-Machines, S.A. has forwarded to me the Notice of Arbitration sent to it by Equapack, Inc. as well as your letters of 24 February 2003, 6 March 2003, 13 March 2003 and 20 March 2003. I will be representing them in this arbitration.

The advance on costs for the arbitration has been sent to you directly by Medi-Machines and I enclose a copy of the payment order.

I hope to send to you within the next several days the name and contact information of the arbitrator we intend to appoint.

Sincerely,  
(Signed)  
Horace Fasttrack  
Advocate at the Court

Incl: Copy of payment order

Horace Fasttrack  
Advocate at the Court  
75 Court Street  
Capitol City, Mediterraneo  
Tel. (0) 146-9845  
Telefax (0) 146-9850

17 April 2003

Mr. Ang Yong Tong  
Registrar  
Singapore International Arbitration Centre  
3 St Andrew's Road  
Third Level City Hall  
Singapore 178958

Re: Equapack, Inc. v. Medi-Machines, S.A., Vis Moot 11 East 1

Dear Mr. Ang:

In respect of the above referenced arbitration, I enclose the Statement of Defense for the Respondent, Medi-Machines, S.A.

Pursuant to SIAC Arbitration Rules, Rule 8.1, the Respondent Medi-Machines, S.A., appoints as arbitrator Dr. (Arbitrator 2), 141 Litigation Avenue, Court City, Oceania, tel. (0) 675-9834, fax. (0) 675-9837.

Dr. (Arbitrator 2) has served as arbitrator for a number of arbitration organizations. I attach a copy of his curriculum vitae.

Sincerely,  
(Signed)  
Horace Fasttrack  
Advocate at the Court

Cc: Joseph Langweiler

Encl: Statement of Defense  
Curriculum Vitae Dr. (Arbitrator 2)

[Note: SIAC sent Dr. (Arbitrator 2) a letter similar to the one sent to Mr. (Arbitrator 1). Dr. (Arbitrator 2) also replied indicating that there were no "circumstances likely to give rise to justifiable doubts as to his impartiality or independence." As noted in the letter from Mr. Ang to Mr. (Arbitrator 1) it is necessary for SIAC to confirm the appointment as arbitrator and upon that decision a letter was sent to both party-appointed arbitrators notifying them of their appointments by SIAC. Pursuant to SIAC Rule 8.1 the two party-appointed arbitrators selected the third and presiding arbitrator and the same procedure was followed as was followed in regard to the two party-appointed arbitrators.]

Singapore International Arbitration Centre (SIAC)

Equapack, Inc. v. Medi-Machines, S.A., Vis Moot 11 East 1

Equapack, Inc. Claimant

v.

Medi-Machines, S.A.  
Respondent

## STATEMENT OF DEFENSE

### I. Parties

1. Equapack, Inc. is a corporation organized under the laws of Equatoriana. It has its principal office at 345 Commercial Ave., Oceanside, Equatoriana. The telephone number is (0) 555-1235 and the fax number is (0) 555-1237. Equapack is in the business of packing many different types of goods for other companies. A small part of the business has been re-packaging bulk commodities into retail packs for chains of stores who wish to market "own brand" products.

2. Medi-Machines, S.A. is a corporation organized under the laws of Mediterraneo. It has its principal office at 415 Industrial Place, Capitol City, Mediterraneo. The telephone number is (0) 487-2314 and the fax number is (0) 487-2320. Medi-Machines is a manufacturer of machinery, including dry foods packaging equipment.

3. The packaging machines are continuous packaging machines, each comprising a weighing unit directly mounted over a vertical bag form-fill-seal unit that creates bags from plastic film, fills them with the weighed product, and seals them. The fill-form-seal unit is capable of producing a wide variety of package styles (including re-sealable zippers) and sizes using a broad range of film types.

### II. Facts

4. The contract for the sale of six Model 14 was concluded as indicated in the Statement of Case. As appears from Claimant's Exhibits 1 to 3, no mention was made that Equapack expected to use the machines to pack salt even occasionally. It is well known that salt is highly corrosive. Any equipment that is expected to be in contact with it must be made of material that is corrosive-resistant. Medi-Machines' Model 17, which is designed to pack salt, uses grade 316 stainless steel. That is the industry standard.

5. Mr. David Swan, Works Manager of Equapack, telephoned Mr. Stefan Drake, who was responsible for the contract for Medi-Machines, on 23 July 2002 to inquire into

the delivery status of the Model 14 machines that Equapack was purchasing. He was not calling to inform Medi-Machines that Equapack intended to use the machines to pack salt. During the conversation Mr. Swan spoke rather casually about other matters, but Mr. Drake did not pay particular attention to those elements of the conversation and had no reason to do so since Mr. Swan was not asking Mr. Drake or Medi-Machines to do anything.

6. As indicated in the witness statement of Mr. Swan (Claimant's Exhibit No. 5) the telephone conversation between Mr. Drake and Mr. Swan was recorded. A complete transcript will be supplied to Equapack and to the Tribunal if requested and if Equapack is prepared to pay the cost of transcribing the recording. At this point it can be said that Mr. Swan made only one statement that mentioned salt. He said "It's a good thing we are getting such a versatile machine from you. A2Z wants us to get going on packaging their stuff. They have everything in mind from large beans to salt to fine powder and we are going to have to do it all. Some of this is stuff we've never handled before, but I am sure we'll do fine with your machines to help us." That is not language that was sufficient to alert Mr. Drake or Medi-Machines that the Model 14 machines being delivered to Equapack would be used to pack salt.

### III. Arbitration clause and applicable law

7. Medi-Machines agrees with the Statement of Case in regard to the arbitration clause and the applicable law.

### IV. Conclusions of law

8. Equapack did not indicate that they needed packaging machines that would be used for packaging salt. Having failed to make this special purpose clear to Medi-Machines prior to the conclusion of the contract, Medi-Machines was not obligated to deliver machines that were appropriate for packaging salt and consequently is not responsible for the corrosion that occurred.

9. Even after the conclusion of the contract for the sale of the Model 14 machines and prior to their delivery and use, Equapack did not inform Medi-Machines that the machines would be used for packaging salt. Mr. Swan was not attempting to inform Mr. Drake or Medi-Machines that the machines would be used for packaging salt when he telephoned on 23 July 2002. What he told Mr. Drake was not sufficient to convey that information. Even if it had been clear that Equapack intended to use the machines to pack salt, it was too late to affect Medi-Machines' responsibility. The contract was concluded, the specific machines to be shipped to Equapack had been selected and those machines had been packed for export shipment.

### V. Request to the Tribunal

10. Medi-Machines, S.A. requests the Tribunal to find that the Model 14 auger-feeder packaging machines delivered by Medi-Machine were in conformity with the contract.

11. Medi-Machines, S.A. also requests the Tribunal to order Equapack, Inc. to pay all the costs of the arbitration, including the legal costs of Medi-Machines, S.A

(Signed)  
Counsel for Medi-Machines S.A.

17 April 2003

Singapore International Arbitration Centre

Equapack, Inc. v. Medi-Machines, S.A., Vis Moot 11 East

Procedural Order No. 1

1. Pursuant to SIAC Rule 17.3 the full Tribunal has authorized me as the presiding arbitrator to make rulings on the organization of the arbitration. The Tribunal has reserved to itself the right to be consulted prior to any procedural rulings on the conduct of the arbitration that I might make.
2. On 18 June 2003 the two parties to this arbitration, through their counsel, and I had a conference call in order to settle on the procedure that would be followed in the commencement of the arbitration.
3. Counsel agreed to submit to me within the next two weeks proof of their authority to act for the parties, pursuant to SIAC Rule 21.
4. The parties recognized that they were in dispute, among other matters, as to the quality of the Model 14 auger-feeder packaging machines for items other than salt. In order to save the costs that might arise if the parties were to call experts to testify before the Tribunal in regard to the quality of the machines, it was agreed that the Tribunal would appoint as expert engineer Eur.Ing. Franz van Heath-Robinson to test Model 14 that had been delivered to Equapack but that had not been used for the packaging of salt. He is to submit his report to the Tribunal and to the two parties. The two parties are to have the right to have representatives present when Eur. Ing. Van Heath-Robinson tests the machines. The parties have waived their right to request Eur. Ing. Van Heath-Robinson to participate in a hearing at which they would have the right to question him. They have also waived their right under SIAC Rule 24.2 to present their own expert witnesses in regard to the quality of the Model 14 packaging machines.
5. Upon the submission of Eur. Ing. Franz van Heath-Robinson's report, I will convene another conference call to determine what further steps should be taken in this arbitration.

(Signed)  
Professor (Presiding Arbitrator)

20 June 2003

Extracts from report of expert engineer Eur.Ing. Franz van Heath-Robinson, appointed by the Tribunal.

! In the presence of representatives of Equapack, Inc. and Medi-Machines, S.A. I carried out tests on one of the Model 14 auger-feeder form-fill-seal machine combinations which had been delivered to my laboratory by Equapack, Inc. in accordance with the Order of the Learned Tribunal. The machine was said to have been used for packaging various materials for approximately one month, and its appearance was in conformity.

! I operated the machine on three different materials, a) raw coffee beans, b) polished rice (i.e. white rice), c) roasted and ground coffee.

!

Assisted by Mr \_\_\_\_ of the manufacturers, using polyethylene film for the bags, I was able to achieve over a short run of about five minutes a production rate, of :

(a) between 175 and 180 1kg bags per minute for coffee beans

Corresponding rates for the other products were:

b) polished rice: 170 to 175 1 kg bags per minute

c) ground coffee 130 to 135 1 kg bags per minute

! In my opinion, the lower rate for the finer product is due to the fact that the metal parts of the product paths within the machine are not highly polished; higher productivity, approaching 180 bags per minute could be achieved for the finer products with polished product components in the product paths. I am aware that similar machines are available with highly polished and chromium plated product paths.

! The damage to the machines I saw in Equapack's works were, in my opinion, caused by corrosion, the result of exposure to salt in a normal moist atmosphere. I consider that the machines I saw were not suitable for use with salt. To operate satisfactorily with salt or other corrosive products, a machine of this type would require the entire product path to be in stainless steel or some other corrosion resisting material.

! The Model 14 machines that I saw could be used in production line packaging, though the production rates for products other than coffee beans were noticeably below the average industry rate of 180 bags per minute for both coarse and fine products.

6 August 2003

Horace Fasttrack  
Advocate at the Court  
75 Court Street  
Capitol City, Mediterraneo  
Tel. (0) 146-9845  
Telefax (0) 146-9850

1 September 2003

Prof. (Presiding Arbitrator)  
197 Resolution Ave.  
Vindobona, Danubia

Equapack, Inc. v. Medi-Machines, S.A., Vis Moot 11 East 1

Dear Prof. (Presiding Arbitrator):

I request that the Tribunal order Equapack, Inc., the claimant in this arbitration, to provide security for our legal costs pursuant to SIAC Rules, Rule 27.3. We request that the security be in the amount of US\$20,000, either in the form of a first class bank guarantee issued by a bank in Mediterraneo or in the form of cash placed in escrow with the Tribunal.

It is unfortunate that Equapack, Inc. has commenced this arbitration to recover the losses caused by its own failure to use the Model 14 packaging machines as they were intended to be used. It has done so, however, at considerable expense to itself and to Medi-Machines, S.A.

It would normally be of little consequence to Medi-Machines, S.A. that it has been required to pay half of the advance on costs to the Singapore International Arbitration Centre and to engage in the legal expenses of defending an unfounded arbitration in Danubia, because it could expect to recover those expenses from Equapack, Inc. in the final award in the arbitration. The situation is such, however, that Medi-Machines, S.A. has every reason to doubt that the award of costs to it would be recoverable from Equapack, Inc.

It is widely reported in the financial press in Equatoriana that Equapack, Inc. has a cash-flow problem and has been delinquent in paying its trade creditors. There are also reports that Equapack, Inc. has sought additional financing from several banks, but that it has not as yet been successful. Clippings of relevant articles are attached. A further consideration is that, while Equatoriana is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the courts in Equatoriana have not been rigorous in their enforcement of foreign awards. In particular, they have generally found means to avoid enforcing awards against firms from Equatoriana when the firm is in financial difficulties, even though not as yet in insolvency proceedings. A copy of a report on experience in court enforcement of awards under the New York Convention prepared by the International Arbitration

Committee of the International Commercial Law Association is attached, with special reference to pages 85 to 91 where the situation in Equatoriana is discussed.

We understand that an order to provide security for costs would be a burden that Equapack, Inc. would undoubtedly wish to avoid. Therefore, we would be willing to review our request if Equapack, Inc. were to provide information relevant to the matters discussed, i.e. the period of time within which they are paying their trade creditors during the past three months and whether that period is longer, shorter or the same as one year ago, their cash flow for the past three months, whether they have been seeking additional bank financing during the past three months and the results of their efforts.

Sincerely,  
(Signed)

Cc: Mr. Joseph Langweiler  
Mr. Ang Yong Tong

Encl.: Financial press articles re Equapack, Inc.  
Report on Enforcement of New York Convention

Joseph Langweiler  
Lawyer  
14 Capitol Boulevard  
Oceanside, Equatoriana

9 September 2003

Prof. (Presiding Arbitrator)  
197 Resolution Ave.  
Vindobona, Danubia

Equapack, Inc. v. Medi-Machines, S.A., Vis Moot 11 East 1

Dear Prof. (Presiding Arbitrator):

I refer to the letter of Mr. Horace Fasttrack to you, dated 1 September 2003, in which he requests the Tribunal to order Equapack, Inc. to post security for costs in the sum of US\$20,000. In the same letter he states that Medi-Machines, S.A. would reconsider its request if Equapack, Inc. were to furnish certain financial information to Medi-Machines, S.A. and to the Tribunal.

The request for the financial information is outrageous. It has nothing to do with this arbitration and can only be considered to be an attempt by Medi-Machines, S.A. to harass Equapack, Inc. for having commenced this arbitration. For that matter, the entire request for security for costs is nothing other than harassment and it should be rejected by the Tribunal without further ado.

There is no reason to expect Equapack, Inc. to lose this arbitration and to have the costs of the arbitration, including Medi-Machine, S.A. legal costs, levied against it. However, in the unlikely event that that should happen, Equapack, Inc. would have no difficulty or hesitancy in paying them. Furthermore, it is likely that by the time the Tribunal has issued any award, Equapack, Inc. will have been purchased by Equatoriana Investors, one of the largest financial firms in Equatoriana. The due diligence is currently in process.

I therefore request the Tribunal to reject the application for Equapack, Inc. to post security for costs.

Sincerely,  
(Signed)

Cc: Mr. Horace Fasttrack  
Mr. Ang Yong Tong

Horace Fasttrack  
Advocate at the Court  
75 Court Street  
Capitol City, Mediterraneo  
Tel. (0) 146-9845  
Telefax (0) 146-9850

17 September 2003

Prof. (Presiding Arbitrator)  
197 Resolution Ave.  
Vindobona, Danubia

Equapack, Inc. v. Medi-Machines, S.A., Vis Moot 11 East 1

Dear Prof. (Presiding Arbitrator):

The letter of Mr. Langweiler to you dated 9 September 2003 raises another matter of great concern to Medi-Machines, S.A. Mr. Langweiler states that there are plans for Equatoriana Investors to purchase Equapack, Inc. and that the due diligence is currently in process. I telephoned Mr. Langweiler to inquire further into this development and he told me that Equapack, Inc. expected to inform Equatoriana Investors about the arbitration between it and Medi-Machines, Inc. He argued that the difficulties that Equapack, Inc. was experiencing in servicing its contract with A2Z, Inc. had raised concerns with Equatoriana Investors. In order to explain the context of its difficulties in servicing that contract, he claimed that it was necessary to divulge the fact of the arbitration and the details of the claim.

There is no doubt that Equapack, Inc. would be in violation of SIAC Rule 34 if it were to divulge the fact of the arbitration and the details of the claim that it has lodged against Medi-Machines, S.A. Whatever difficulties Equapack, Inc. may have in the due diligence that Equatoriana Investors is conducting does not permit it to violate the arbitration rules to which they have agreed. I strongly urge you to order Equapack, Inc. to honor its obligations under Rule 34 and refrain from divulging any aspect of the current arbitration, including its very existence.

Sincerely,  
(Signed)

Cc: Mr. Joseph Langweiler  
Mr. Ang Yong Tong

Joseph Langweiler  
Lawyer  
14 Capitol Boulevard  
Oceanside, Equatoriana

24 September 2003

Prof. (Presiding Arbitrator)  
197 Resolution Ave.  
Vindobona, Danubia

Equapack, Inc. v. Medi-Machines, S.A., Vis Moot 11 East 1

Dear Prof. (Presiding Arbitrator):

Counsel for Medi-Machines, S.A. has now come up with a new argument to delay any progress in this arbitration. Of course SIAC Rule 34.6 provides that the parties and the Tribunal shall at all times treat all matters relating to the proceedings and the award confidential. However, it then goes on to provide a number of exceptions. The SIAC Rules recognize that confidentiality in arbitration is not an absolute obligation.

As noted, Equatoriana Investors plans to purchase Equapack, Inc. and is currently conducting a due diligence. The courts of Equatoriana have held in a number of cases that the party being purchased must divulge all matters that materially affect either its financial or its business situation. As it turns out, the inability of Equapack, Inc. to properly service its contract with A2A, Inc. has had a serious impact on Equapack's reputation as a responsible firm. It has also had significant direct financial consequences as indicated by the claim for damages in this arbitration.

These adverse developments for Equapack, Inc. are directly due to the failure of the Model 14 machines purchased from Medi-Machines, S.A. It is, therefore, an absolute necessity for Equapack, Inc. to fully disclose in the due diligence all aspects of the purchase of the machines, their failure and Equapack's claim against Medi-Machines, S.A. in this arbitration.

Aside from the merits of the request, Equapack, Inc. strongly resists any notion that the Tribunal has the authority under the SIAC Rules to order Equapack, Inc. to maintain confidentiality in regard to any aspect of the arbitration. Such an order, if justified on the merits, could come only from the relevant court of Danubia where the arbitration is taking place.

Sincerely,  
(Signed)

Cc: Mr. Horace Fasttrack  
Mr. Ang Yong Tong

Singapore International Arbitration Centre

Equapack, Inc. v. Medi-Machines, S.A., Vis Moot 11 East

Procedural Order No. 2

1. The Tribunal and the parties have received the report of Eur. Ing. Franz van Heath-Robinson. The report shows that representatives of the two parties were present when he tested one of the Model 14 packaging machines that had been delivered to Equapack, Inc. and put into service but not used for packaging salt. As indicated in Procedural Order No. 1, the parties have agreed to accept the report and have waived their right under SIAC Rule 24 either to request Eur. Ing. Van Heath-Robinson to appear at a hearing to be questioned on his report or to present expert witnesses of their own. The parties are free to present their conclusions to the Tribunal as the legal significance of the matters stated in the report.
2. In a conference call on 1 October 2003 counsel for Medi-Machines, S.A. stated that it had not and would not raise any question under CISG article 39 as to whether Equapack, Inc. had given notice of the alleged non-conformity of the machines in time or in a sufficiently detailed manner. Counsel for Medi-Machines, S.A. stated, however, that it reserved the right to raise questions as to whether there had been fundamental breach even assuming that all of the allegations made by Equapack, Inc. were accepted by the Tribunal. It also reserved the right to question whether the letter from Mr. Swan, dated 19 October 2002, (Claimant's Exhibit No. 6) constituted a declaration of avoidance of the contract as required by CISG articles 49 and 26.
3. It was noted that this defense had not been raised in the Statement of Defense. Nevertheless, considering that notice of the possibility of such a defense had been given at this early stage of the proceedings, it was agreed that under SIAC Rule 17 Medi-Machines, S.A. would be allowed to raise this argument in the memorandum discussed below and the oral hearing also discussed below. If subsequent to the memorandum and the oral hearing Medi-Machines, S.A. should wish to amend its Statement of Defense, it would be permitted to do so.
4. In respect of the request for security for costs submitted by counsel for Medi-Machines, S.A. in his letter of 1 September 2003 to me as the Presiding Arbitrator and resisted in the letter of 9 September 2003 from counsel for Equapack, Inc., it was agreed that the parties would explain their positions in more detail in the memoranda and oral hearing discussed below.
5. Similarly, it was agreed that the parties would develop their positions in respect of the request of Medi-Machines, S.A. that the Tribunal order Equapack, Inc. to maintain confidential the existence of the arbitration and all details in connection with it.
6. Normally the arguments of the parties in regard to the request for security for costs and the request for an order to maintain confidentially would be considered first

and in as expeditious manner as possible, leaving the arguments on the substance of the dispute to be considered at a later time. However, in the special circumstances of this arbitration [Moot] the arguments of the parties on all of the issues currently ripe for consideration should be submitted in the same memorandum and will be heard in oral argument at the same time.

7. The parties agreed that they would submit memoranda on the following questions:
  - a) Were the Model 14 packaging machines in conformity with the contract?
  - b) Did the condition of the Model 14 machines constitute fundamental breach and did the letter of 19 October 2002 from Mr. Swan to Mr. Drake constitute a declaration of avoidance of the contract?
  - c) Should the Tribunal order Equapack, Inc. to post security for costs?
  - d) Is Equapack, Inc. obligated to refrain from divulging the existence of the arbitration and all details in connection with it in the due diligence currently being conducted by Equatoriana Investors? If so, is the Tribunal authorized to order it to do so? What consequences might follow upon the existence of such an order if Equapack, Inc. were to violate the order?

8. Any other issues that may arise in this arbitration, such as the amount of recovery of one party against the other, should not be submitted at this time [that is, should not be submitted in the Moot memoranda] but will be considered by the Tribunal subsequent to the oral hearings scheduled as per the following paragraph of this order.

9. The memorandum for claimant should be submitted by e-mail to the Tribunal by 11 December 2003 to the address indicated in the Rules of the Willem C. Vis International Commercial Arbitration Moot with hard copies to follow as there required. The memorandum for respondent should be submitted by e-mail to the Tribunal by 6 February 2004 with hard copies to follow. Oral hearings will be held in Vindobona, Danubia, on the dates indicated in the Rules of the Moot. The Tribunal will welcome counsel, arbitrators and other persons associated with the parties to social events immediately prior to the hearings. Further details will follow in due course.

(Signed)  
Dr. (Presiding Arbitrator)

3 October 2003

Singapore International Arbitration Centre  
Equapack, Inc. v. Medi-Machines, S.A., Vis Moot 11 East 1  
Procedural Order No. 3

**1. To what extent are the parties bound by Procedural Order No. 2?**

Procedural Order No. 2 was issued by the President of the arbitral tribunal after consultation with the parties. Consequently, the parties may not go beyond the four questions that are set out. Specifically, no discussion of monetary compensation by way of restitution of the purchase price, damages, interest or the like should be included either in the memoranda or in the oral arguments. If the arbitral tribunal were to decide that there was a breach of the contract, the amount of monetary compensation would be in issue. That would not take place during the period of the Moot, but in subsequent hearings in the arbitration (that would not be part of the Moot). Questions relating to the relationship between Mr. Arbitrator 1 and Mr. Langweiler are also not to be raised. Not only do they not appear in Procedural Order No. 2, but SIAC Rule 13.1 provides that a challenge to an arbitrator must be made within 14 days after the circumstances that would give rise to the challenge became known. That was not done.

As noted in Procedural Order No. 2, para. 3, SIAC Rule 17 gives the arbitral tribunal broad authority to determine the procedure to be followed in the absence of agreement of the parties on a particular procedure. Specifically, it gives the tribunal the authority to determine whether any amendment to the statement of case or the statement of defense should be allowed. Therefore, in the arbitration [not the Moot] the parties would be able to request the tribunal to allow them to raise new claims or defenses, so long as those claims or defenses were within the perimeters of the arbitration agreement. Until such a request was made and granted, arguments going to those claims or defenses would not be allowed.

In regard to the question as to whether “the condition of the Model 14 machines constitute[d] fundamental breach and [whether] the letter of 19 October 2002 from Mr. Swan to Mr. Drake constitute[d] a declaration of avoidance of the contract”, any argument relative to fundamental breach or a declaration of avoidance may be raised.

**2. Are Equatoriana and Mediterraneo party to the CISG?**

Yes, and they made no declarations when acceding to the Convention.

**3. Are Equatoriana and Mediterraneo common law or civil law countries?**

The law of Equatoriana is based on that of England while the law of Mediterraneo is based on that of Italy. Neither country is a member of the European Union.

Equatoriana does not, however, give more consideration to decisions of the English courts than it does to those of any other country.

**4. What court in Danubia, if any, would be competent to issue an order in respect of this arbitration?**

When Danubia adopted the UNCITRAL Model Law on International Commercial Arbitration it specified in Article 6 of the Model Law that the competent court for matters arising under the Model Law would be the Commercial Court in Vindobona. Danubia made no amendments or additions to the Model Law when adopting it.

**5. Are there any agreements between Danubia, Equatoriana or Mediterraneo relevant to enforcing arbitral awards other than the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)?**

No.

**6. Have Equatoriana, Danubia or Mediterraneo enacted the UNCITRAL Model Law on Cross-Border Insolvency?**

Although none of the three has enacted the Model Law, all three have insolvency laws that implement the same policies as are found in the Model Law.

**7. What does the title "Advocate at the Court" mean?**

Lawyers go under various headings in different countries. Advocate at the Court is one of those. It would carry the idea that the person is authorized to represent clients before the court of his or her country. Whatever other significance it might have would depend on the law of the country in question.

**8. Did Equapack, Inc. and Medi-Machines, S.A. enter into any agreement other than what is set out in the Statement of Case?**

No, except that only that part of Medi-Machines, S. A.'s General Conditions relevant to the dispute have been reproduced. There was no guarantee of performance in the General Conditions.

**9. Does it normally fall under a works manager's responsibility to purchase packing machines?**

Mr. Swan, Works Manager of Equapack, Inc., was given that responsibility.

**10. How many years have Equapack, Inc. and Medi-Machines, S.A. been in business?**

Both have been in business for over 30 years. When Equapack, Inc. began packaging small quantities of tea, coffee, rice, sugar and the like in 1997, it purchased one second hand auger feeder machine, which was sufficient for its purposes until the contract with A2Z.

**11. Why did Medi-Machines, S.A. offer to arrange for shipping the machines and why did Equapack, Inc. accept that offer in spite of the fact that the contract was F.O.B.?**

The use of a trade term such as F.O.B. designates, among other things, which shipping costs are to be paid by the seller and which by the buyer. The International Chamber of Commerce has standardized a number of those terms in its INCOTERMS, but there are other definitions in use, particularly in trade with the United States. In the case of F.O.B. (INCOTERMS), which is to be used only for voyages by sea, the seller pays the costs to the point the goods are loaded on the ship. It is the responsibility of the buyer to arrange for the ship and to inform the seller when and where, within the limits specified in the sales contract, the ship will be available for loading. When the goods in question are commodities, grain, ore, petroleum, etc., the buyer may own its own ships or regularly arrange for the carriage of the goods. However, when the buyer is an occasional purchaser, as in this case, the seller is more likely to have regular transport arrangements than is the buyer. In that case it is often agreed that the seller will arrange for the transport for the account of the buyer.

**12. Why was the letter of credit opened for \$430,000 when the purchase price was \$390,000?**

It is typical for a letter of credit to be opened for 10% more than the purchase to cover any unexpected additional costs.

**13. How did Mr. Swan come to know that Medi-Machines, S.A. produced the kind of packing machines that would be required?**

Mr. Swan had known of Medi-Machines, S.A. for some time. It is a well-known company in the field.

**14. Did Mr. Swan or anyone else in authority at Equapack, Inc. know that salt is highly corrosive and might require special equipment?**

Mr. Swan, as the Works Manager, was the responsible person. He will be prepared to testify that he did not know, and had no reason to know, that salt was so corrosive that it would require special equipment to handle it. He will be prepared to say that, if he had known, he would certainly not have used the Model 14 machines for packing salt without first making sure that they were appropriate for that purpose.

**15. Has Medi-Machines, S.A. been involved previously in disputes about the quality of its product?**

There have been complaints of one form or another over the years, as would be true of any firm, but no there has never been a legal action in court or arbitration.

**16. Is salt considered to be "dry stuff"?**

Yes. Of course it can get wet, but then it would not be in condition to be packed by Equapack, Inc.

**17. Did Mr. Drake at any point refer Mr. Swan to Medi-Machines, S. A.'s literature or website prior to the conclusion of the contract?**

No.

**18. Was any technical literature on the Models 14, 16 or 17 furnished by Medi-Machines, S.A. to Equapack, Inc. prior to the conclusion of the contract?**

No.

**19. Did the technical literature furnished with the Model 14 machines when they were delivered meet all mandatory requirements of Mediterraneo and Equatoriana?**

The mandatory requirements of the two countries in respect of commercial equipment sold to a commercial purchaser are limited to elements that go to health and safety. All of those requirements were met.

**20. Has Equapack, Inc. visited the website of Medi-Machines, S.A. at any point of time?**

They had not done so at any time before the dispute arose.

**21. Is there a transcript of the telephone conversation of 23 July 2002 between Mr. Swan and Mr. Drake?**

As indicated in the Statement of Defense, para. 6 a complete transcript would be furnished to Equapack, Inc. if it were willing to pay to have it done. Equapack could have requested the Tribunal to order a transcription to be prepared and included as one of the costs of the arbitration. However, it was not requested in the conference call of 1 October 2003 and was not included in Procedural Order No. 2. Therefore, no complete transcript can be made available at this stage of the arbitration.

**22. What did Mr. Drake say during the telephone conversation of 23 July 2002 when he told Mr. Swan "that the Model 14 machines should not be used for salt?" (Claimant's Exhibit No. 7)**

The tape recording does not indicate that he replied to Mr. Swan's statement about salt in that conversation. In the telephone conversation of 18 October 2002, when Mr. Swan telephoned to complain about the corrosion, Mr. Drake said that which he repeated in his letter of 27 October 2002, i.e. that salt was a special product and that the Model 17 machines were designed to pack it.

**23. Could Medi-Machines, S.A. have stopped the shipment of the Model 14 machines immediately following the telephone conversation of 23 July 2002?**

Yes. As indicated in Mr. Drake's telefax of 24 July 2002 (Claimant's Exhibit No. 4), the machines were packed for shipment but they were still at Medi-Machines, S.A.

**24. Were the Model 14 machines installed by personnel from Medi-Machines, S.A. or by personnel from Equapack, Inc.?**

They were installed by personnel from Equapack, Inc. The installation was not difficult technically and there were no problems in subsequent operation arising out of errors in installation.

**25. Does the operations manual for the Model 14 machine include a warning against packing salt with it?**

The word "salt" does not appear in the operations manual. All that it says that might be relevant is "The Model 14 is not intended for use with highly corrosive products." The operations manual that accompanied the machines was in English, a language that was understood by all of the relevant personnel at Equapack, Inc.

**26. Are there other products for which the Model 14 machine would be inappropriate?**

The Model 14 machine would be inappropriate for all other corrosive products. In addition, as stated by Mr. Drake in his letter of 3 July 2002, multi-head weighers would be more appropriate than auger-feeder machines for packing coarser products.

**27. Do many companies pack salt using the type machines manufactured by Medi-Machines?**

The vast majority of firms that pack dry bulk products into retail sized packages do not pack salt. However, enough do that there is a market for machines designed for that purpose.

**28. When did Equapack, Inc. first notice that the machines were deteriorating?**

As stated in the Statement of Case, para. 8, the signs of serious corrosion were evident by the end of September. In the nature of corrosion, it did not happen on a given date. No more precise information can be given.

**29. Could the machines that had been damaged by salt-induced corrosion have been repaired by, for example, replacing the corroded parts?**

The corrosion has affected such a large part of the machinery that it would not be feasible to repair or replace the corroded parts.

**30. Were the machines tested by Eur. Ing. Franz van Heath-Robinson ones that had been used for the packaging of salt?**

As provided in Procedural Order No. 1, para. 4, the machine delivered to Eur. Ing. Franz van Heath-Robinson for testing was one of the machines that had been

delivered to Equapack, Inc. but that had not been used for packaging salt. It showed no salt corrosion, either from exposure while at Equapack or during the sea voyage when it was delivered to Equapack. In addition, as noted in his report, he visited Equapack and observed the machines that had been used for packaging salt, but did not test them. A representative of Medi-Machines, S.A. was present when he visited Equapack.

**31. Were the Model 14 machines routinely cleaned by Equapack, Inc. during the period they were used by it?**

Since the machines were used for packing food, they were cleaned regularly and in accordance with all applicable standards and regulations. In particular, they were cleaned whenever there was a change in the product to be packed.

**32. Why was the Model 14 machine discontinued?**

The model was three years old when discontinued and that was sufficiently close to the average product cycle of five years. The model had not sold as well as had been expected when it was first introduced.

**33. Was the Model 14 machines the least expensive machines that Medi-Machines, S.A. could offer at the time the proposal was made?**

Yes. The six machines sold to Equapack, Inc. were the last that Medi-Machines, S.A. had in its inventory.

**34. What was the industry standard for packaging of fine products using an auger-feeder?**

Eur. Ing. Van Heath-Robinson has stated in his report that the average industry rate for both coarse and fine products was 180 bags per minute. It is understood that the average industry rate has not changed in recent years. The parties were represented when he made his tests. According to Procedural Order No. 2 the parties have waived their right to question Eur. Ing. Van Heath-Robinson in a hearing and have waived their right to present their own expert witnesses in regard to the quality of the Model 14 packaging machines. Therefore, the report must be accepted as accurate and self-explanatory in regard to all factual matters going to the quality of the Model 14 machines. As stated in Procedural Order No. 2, "[t]he parties are free to present their conclusions to the Tribunal as [to] the legal significance of the matters stated in the report."

**35. Why did Equapack, Inc. purchase six replacement machines?**

Equapack needed six functioning machines to fully service the contract with A2Z.

**36. Did Mr. Swan say anything in the telephone conversation of 18 October 2002 that could be taken as a declaration of avoidance of the contract?**

Mr. Swan said orally that which he said in his letter of 19 October 2002 (Claimant's Exhibit No. 6), i.e. that Equapack could not use the machines and that Medi-Machines, S.A. should arrange to take them back.

**37. Is there any agreement of confidentiality between Equapack, Inc. and Medi-Machines, S.A. apart from SIAC Rule 34.6?**

No.

**38. Is Equapack, Inc. under a duty to Equatoriana Investors to disclose the fact of the arbitration and the details of it?**

The letter of Mr. Langweiler of 24 September 2003 accurately states the legal situation in Equatoriana. Each case must be considered individually as to whether the matters in question "materially affect" the financial or business situation of the firm to be purchased. The court decisions to which he refers were not based on any statutory provision and they did not involve arbitrations. The court decisions referred to included several of the Supreme Court of Equatoriana. None of the other exceptions to the duty of confidentiality set forth in SIAC Rules 34.6 apply to this arbitration.

**39. Are Equatoriana Investors under any duty not to disclose knowledge acquired during the due diligence proceedings including knowledge about the arbitration proceedings?**

As is typical of due diligence proceedings, Equatoriana Investors would be under a duty to Equapack, Inc. not to disclose knowledge acquired during the due diligence proceedings. It would have no duty to anyone else not to disclose what it might have learned.

**40. Has Equapack, Inc. already disclosed anything about the arbitration to Equatoriana Investors?**

No, not yet.

**41. Equatoriana Investors was described as "one of the largest financial firms in Equatoriana." Is it large in terms of assets or in terms of the number of investors?**

It is large in terms of assets. There are many investors in the firm, but only a few are engaged in the management of the firm.

**42. Is Equapack, Inc. actually in the process of being purchased by Equatoriana Investors?**

That is the expectation on both sides. The target date for completion of the sale of Equapack, Inc. to Equatoriana Investors is 12 May 2004. Of course, something may arise in the due diligence that would lead to a delay in the sale or even for Equatoriana Investors to decide not to proceed with the purchase. You can assume that as of the oral arguments in April 2004 nothing will have as yet occurred to delay the sale or

lead to its cancellation, but that the possibility is still open. The intended sale is of the company itself and not only of its assets.

**43. Is there any further information in regard to Equapack, Inc.'s financial condition? Are the newspaper reports to be accepted as accurate?**

The newspaper reports state that "Equapack's cash-flow problems seem to have begun in late 2002." There is no specific information given in the newspaper reports. The only way to know whether the newspaper reports are accurate when they report that Equapack, Inc. has a cash-flow problem, that it has been slow in paying its trade creditors and that it has sought additional bank financing would be if Equapack, Inc. were willing to furnish the information requested by Mr. Fastrack in his letter of 1 September 2003. The newspapers referred to are reputable. Medi-Machines, S.A. has no information other than the newspaper reports.

**44. How large a company is Equapack, Inc.?**

There is no publicly available information in regard to the sales, profit or assets of Equapack, Inc. However, it has been estimated in a reputable publication that it has annual sales between US\$8,000,000 and US\$10,000,000.

**45. What are the standards in Danubia for the ordering of security for costs?**

Danubia has no experience with such requests in arbitration. It may be of interest to note that the Singapore International Arbitration Act, art. 12(1)(a) specifically authorizes an arbitral tribunal to order security for costs.

**46. May we accept that the report of the International Arbitration Committee of the International Commercial Law Association is accurate in regard to the enforcement of arbitral awards in Equatoriana?**

The report has been carefully prepared and the information contained therein can be accepted as being accurate. Mr. Fastrack gives a fair description of its conclusions. Unfortunately, while the report on the enforcement of arbitral awards in Equatoriana was made available to the arbitral tribunal and to Mr. Langweiler (see the cc at the end of Mr. Fastrack's letter of 1 September 2003), it is not possible for technical reasons to reproduce it in these clarifications.

**47. What is the domestic law in Equatoriana concerning international commercial arbitration and, in particular, the enforcement of foreign arbitral awards?**

Equatoriana has enacted the UNCITRAL Model Law on International Commercial Arbitration without amendment.

**48. Does Equapack, Inc. have assets in any country other than Equatoriana that could be used to satisfy an award of costs against it?**

No, all of Equapack's assets are in Equatoriana.

(Signed)  
Prof. (Presiding Arbitrator)

4 November 2003