

2nd RGNUL NATIONAL NEGOTIATION COMPETITION 2022

SEMI-FINAL GENERAL INFORMATION



Justice Kuldip Prakash Bhandari
Foundation, Chandigarh

Background Information

Mohawk is a small-underdeveloped country, where the economy majorly relies on its agricultural produce. **Atlantrix Plantations Ltd. (“Atlantrix”)**, a state-owned corporation is a leading cultivator and exporter of fresh fruits and vegetables incorporated under the laws of the Republic of Mohawk. Mohawk also has a long fishing tradition, where the local fishermen are indulged in aggressive fishing practices. Mohawk’s economy, which the World Bank classifies as lower-middle income, is primarily based on tourism, fishing, timber, and agriculture.

Wakanda has a diversified economy, which the World Bank classifies as high income and its trade through sea routes is vast. It is one of the largest producer and exporter of Chemical fertilizers in the world. **Olympid Industries Ltd. (“Olympid”)** is a large conglomerate that provides Chemical Fertilizer to the agriculture sector incorporated under the laws of Wakanda.

The import, sale and distribution of Chemical Fertilizers to Mohawk is entirely regulated and is overseen by the “**National Chemical Fertilizer Commissioner**” (“**NCFC**”) of the Ministry of Agriculture in Mohawk. Olympid although located in Wakanda is registered as an importer and supplier of Chemical Fertilizer in Mohawk.

Agreement

Wakanda and Mohawk signed an Agricultural Products Procurement Agreement as per the provisions of the United Nations Convention on Contracts for the International Sale of Goods (“CISG”). For the development of bilateral trade on the basis of equality and mutual benefit, the agreement is an important element in promoting friendly relations among States. Thereby, Atlantrix entered into a contract with Olympid to purchase Chemical Fertilizer at a subsidized price. In terms of the contract, Atlantrix ordered 600 Metric Tons of Chemical Fertilizer from Olympid. NCFC granted permission and allocated the supply of 600 Metric tons of Chemical Fertilizer to Atlantrix.

In terms of the Contract, Atlantrix placed a purchase order for a total of 6000 Metric Tons of Chemical Fertilizer at the subsidized price of \$50,000/- per Metric Ton and a total sum of \$300,000,000.00. Olympid issued a proforma invoice for 600 Metric Tons of Chemical Fertilizer at the subsidized price of \$ 50,000/- per Metric Ton and a total sum of \$ 300,000,000.00.

Relevant Clauses in the Agreement

Clause 20 – Termination of Contract

In the event, one of the Parties hereto commits a breach of this Contract and upon being notified by the other Party (Innocent Party) the Party at breach has not remedied the breach specified in such notice within a period of thirty (30) days or such greater number of days as may be specified in the said notice it will amount to termination of the contract by such Innocent Party.

Clause 21 - Force Majeure

In this Clause, “Force Majeure” means an exceptional event or circumstance:

1. which is beyond a Party's control.
2. which such Party could not reasonably have provided against before entering into the Contract.
3. which, having arisen, such Party could not reasonably have avoided or overcome, and
4. which is not substantially attributable to the other Party.

Clause 22 - Notice of Force Majeure

If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure (as defined in Clause 21 hereinabove) and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure. The Party shall, having given notice, be excused from performing such obligations for so long as such Force Majeure prevents it from performing them.

Clause 23 – Damages

Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

Dispute

As per the agreement, one of Wakanda's oldest ships, "MV Dorado", was assigned to deliver the consignment of chemical fertilizers to Mohawk. Olympid informed the NCFC and Atlantrix that the arrival of MV Dorado at the port of Mohawk was delayed for over 3 months due to several breakdowns of the vessel while sailing in international waters. Olympid also informed NCFC and Atlantrix that no stocks of Chemical Fertilizer would be available in Mohawk until MV Dorado arrives in Mohawk. However, the NCFC insisted that Olympid was mandated to supply the Chemical Fertilizer on board the MV Dorado in accordance with the allocation given to Atlantrix within 45 days of the date of the said intimation.

Unfortunately, MV Dorado sank in Mohawk's Exclusive Economic Zone (EEZ). The area where the vessel sank was also the natural habitat of the Speartooth Sharks, which is one of the rarest shark species on earth, found only in tropical rivers in Mohawk and the northern Pacific. The chemical fertilizers caused huge havoc in the Exclusive Economic Zone of Mohawk which is critical to the Mohawk's fishing industry.

The delay in releasing the said shipment has caused havoc in plantation operations of Atlantrix as the lack of Chemical Fertilizer has affected the overall quality and wellbeing of the plants. Therefore, Mohawk insisted on the compensatory damages and specific performance of the contract for the supply of goods and punitive damages for the destruction caused due to chemical fertilizers after getting to know that Wakanda had been informed of the unseaworthiness of the vessel even before the Atlantrix's order was placed.

Both states have agreed to reserve a day at the **Patiala Accords, 2022**, in order to discuss this dispute. Negotiations will take place between Representatives of Olympid and Atlantrix, along with Counsel from the Foreign Ministries of both countries. **Mohawk/Atlantrix** shall be the **requesting party**, while **Wakanda/Olympid** shall be the **responding party**.