

Dispute Over Disagreement to Defer Contract



Case No. 8 – 1996

Claimants:	Sellers
Respondents:	Buyers
Product:	RBD Palm Stearin
Contract:	PORAM Contract No. 2 – Joint PORAM/MEOMA FOB Contract for Processed Palm Oil and Palm Kernel Oil Products in Bulk
Matters in Dispute:	Disagreement to Defer Contract – Leading to Non-Fulfilment of Contract
Year of Award:	1996

MATTERS AT ISSUE

1. The Arbitrators had to rely solely on the submissions of the Claimants, as the Respondents did not submit any Statement of Defence. The Respondents were given due notices and reminders to answer the Statement of Claims, but they did not respond. Their knowledge of this proceeding is further confirmed by their facsimile of 25th July 1996 addressed to PORAM.
2. There was a contract between the Claimants and the Respondents as tendered by the Claimants. The shipment period was May 1995.
3. In early May 1995, the Respondents asked for deferment of contract. The Claimants agreed to defer to July 1995.
4. The Respondents were not absolutely happy and asked for the contract to be deferred “2 months more” but the Claimants did not agree. Finally on 17th May 1995 the Respondents replied *“we appreciate your co-operation and agree with your proposal. We’ll do our best to improve our situation by various methods”*.
5. On 11th July 1995, the Claimants reminded the Respondents that there would be “no more extension”.
6. On 22nd July 1995, the Respondents wanted to cancel rather than delay the shipment. The Respondents gave the reason that there was “restriction of laundry – soap manufacturer”.
7. On 25th July 1995, the Claimants could not agree on cancellation. They wanted shipment in August 1995 or that the contract should be cash-settled or washed-out.
8. On 1st September 1995, the contract was deferred to January 1996 and the Claimants asked the Respondents to open the Letter of Credit.
9. However, on 30th January 1996 the contract was not lifted and the Claimants again asked that the contract be cash-settled at US\$140 PMT or be settled legally.



10. Matters dragged on and on 16th March 1996 the Claimants gave the ultimatum "if the contract is not being settled by 23rd March 1996, we have no alternative but to go for legal proceedings".

THE ARBITRATORS' FINDINGS

1. Despite ample allowance, the Respondents could not perform the contract. The Respondents are in default.
2. We therefore find in favour of the Claimants and that the contract be closed out on 25th March 1996 the first trading day after 23rd March 1996, which was the date of ultimatum from the Claimants.

THE AWARD

Accordingly we award the dispute in favour of the Claimants and direct the Respondents to pay the following:

Price as determined by the Price Settlement Committee for RBD Palm Stearin on 25th March 1996 was US\$439 PMT FOB Port A prompt basis.

500 MT x US\$146 PMT	
(Price Difference US\$585 – US\$439 PMT	
between the contract price and	
the settlement price on 25th March 1996)	US\$73,000.00
Interest at 10% for 522 days	US\$10,440.00
Total	US\$83,440.00

If payment is not made within 14 days of the date of this Award, an interest of 10% per annum to run from date of award until date of payment. No additional award is awarded to the Claimants.

No further award. The costs of this arbitration as assessed by PORAM shall be borne by the Respondents.