

contract, commercial practice, and the interests of justice.

OR

The arbitrators or the umpire, as the case may be, shall decide in accordance with the law of the seller's state.

8. Judgment upon the award rendered may be entered in any court having jurisdiction.

(Notes: International Commercial Arbitration is a field of study in itself. Since, however, almost all model contracts contain an arbitration clause, some observations may be made from the point of view of countries of the Asian African region. The often deceptively simple arbitration clause conceals many legal problems, chief of which are

- (a) The validity of the clause according to the national laws of the parties.
- (b) The extent to which terms as to arbitration are supplemented or over-ridden by national law.
- (c) The manner and extent of the enforceability of the award.

These legal problems which face all parties to an arbitration agreement are aggravated where an Asian African country deals with a country of the Socialist Bloc, or a European country other than the United Kingdom, by the comparative unfamiliarity of the Asian African countries with the legal systems of these countries.

Historical development has also posed certain problems to the Asian African countries. In some cases, there has initially been a tie up between the seller from the region and the overseas buyer, which has led the seller to accept terms as to arbitration unfavourable to him. Even after this phase

came to an end, the weaker bargaining position of these countries as sellers conduced to the same end. Lastly, between the two world wars institutionalized arbitration developed in Europe and the U.S.A., with the result that the great institutional centres of arbitration are to be found in these regions. (vide para 20 of Mr. Ion Nestor's report—A/CN. 9/42).

The characteristic model contract for the sale of primary produce from our region contains terms as to arbitration which stipulate

- (a) That the arbitral tribunal is to be a body situate in the buyer's country, to which the buyer is sometimes connected ;
- (b) That the arbitration is to be conducted in the buyer's country ;
- (c) That the law applicable is to be the law of the buyer's country.

The rules formulated above attempt to overcome some of these disadvantages. There are already a number of sets of rules of arbitration in existence e.g. the Arbitration Rules of the E.C.E. (1966), the Arbitration Rules of ECAFE (1966), and the Arbitration Rules of the International Chamber of Commerce. Sellers can decide which of these best suits them, and seek to have them incorporated into the contract.

Many modern model contracts (e.g. many of the modern E.C.E. General Terms and Conditions) contain no reference to any legal system to be applied in the course of arbitration. It is suggested that this creates uncertainty. The suggested rules set out above give a first alternative which does not give an advantage to either party. It also gives effect to the idea that a model contract should be to a great extent self-regulatory. The second alternative is suggested because it may be felt that disputes cannot be settled without reference to a legal system. It may also be that the first

alternative is illegal as contrary to public policy by ousting the jurisdiction of the courts (see for English law *Orion Compania Espanola de Seguros v Belfort Maatschaappij voor algemene verzekering* (1962) 2 Lloyd's Reports 257 at 264).

REPORT OF THE STANDING SUB-COMMITTEE ADOPTED AT THE THIRTEENTH SESSION

The Standing Sub-Committee on International Sale of Goods composed of Ceylon, Egypt, Ghana, India, Japan, Nigeria and Pakistan examined the Draft Standard Form of Contract for Sale of Consumer Goods prepared by Mr. S.S. Basnayake, Joint Rapporteur, which is set out at pages 39 to 60 of this publication.

At the request of the representative of Pakistan, the representative of Japan, Mr. Kumao Nishimura acted as interim Chairman of the Sub-Committee and the representative of Nigeria, Mr. J. B. Ajala stood in as interim Rapporteur.

The Sub-Committee having considered the Standard Form of Contract on 24th January, 1972 submits to the Committee the amendments set out below :

- (1) The various parts of the Standard Form of Contract should be so called and should be numbered with Roman figures as follows :

PART I	—	Introductory Part
PART II	—	Packing
PART III	—	Taxes, Customs Duties and Charges
PART IV	—	Quality, Quantity and Inspection
PART V	—	Shipment
PART VI	—	Delivery
PART VII	—	Payment

PART VIII	—	Export Licence
PART IX	—	Passing of Risk
PART X	—	Relief
PART XI	—	Arbitration

- (2) *Introductory Part* : Place where contract was made should be mentioned in this part and a blank space should be provided in the form accordingly.
- (3) *Packing* :
- (a) Recast paragraph 2 to read as follows :
 "The seller shall deliver the goods in packing that is reasonably sufficient and shall take into consideration the nature of the goods in order to prevent damage to or deterioration of the goods during transit assuming that the packages are properly handled."
- (b) Paragraph 4(c)—in place of 'Consignee' write "name or names of the Consignee".
- (4) *Taxes, Customs Duties and Charges* :
- (a) *Paragraph 1* : What exactly is meant by the word "formalities" in this context should be clearly spelt out, e.g. documents.
- (b) *Paragraph 3* : Add the following proviso to this paragraph :
 "Provided that, if the increase exceeds... .. per cent and the seller notifies the buyer within a period of.....from the date of the increase, the buyer may avoid the contract."
- (5) *Quality, Quantity and Inspection* :
- (a) Change the full-stop after the second parenthesis to a colon.
- (b) Insert the word *usual* between "of" and "average" in the second line of paragraph 2.

- (c) Delete the words "or his agent" in the fourth line of paragraph 4 and in the first line of paragraph 7.
- (d) Paragraphs 4 and 5 should be combined.
- (e) Change "when" of the first line of paragraph 6 to "if" and recast the second sentence of the paragraph to read "failing such agreement they shall be drawn by an independent surveyor chosen by agreement for such purpose by the two parties."
- (f) A clause relating to hidden or latent defects should be inserted in an appropriate place in paragraph 7 or 8.
- (g) Paragraph 10 should precede paragraph 9.
- (h) Delete the words "of his choice" in paragraph 10, and in between "a" and "Surveyor" insert "independent".
- (6) *Shipment* : No comments.
- (7) *Delivery* :
- (a) In the parenthesis in paragraphs 4 and 5 change the indefinite article "a" to "an".
- (b) Recast the whole of the second sentence of paragraph 7 to read as follows :
 "The buyer shall also bear the cost of transporting the goods to the place of storage and if a vessel is later provided by the buyer, he shall also bear the cost of transporting the goods from the place of storage on board the vessel/alongside the vessel."
- (c) Recast the whole of paragraph 9 to read as follows :
 "If after the expiry of the said period of

storage or any extension thereof the buyer fails to nominate a vessel for delivery, the seller shall have the right either to maintain or to terminate the contract and shall in either case be entitled to claim damages."

(8) *Payment :*

Paragraph 2 appears to be too rigid and other modes of payment such as by bills of exchange drawn under a documentary credit or promissory notes should be provided for.

(9) *Export Licence :* No comments.

(10) *Passing of Risk :* No comments.

(11) *Relief :*

- (a) In paragraph 2 in place of "as soon as possible" write "immediately".
- (b) Recast first part of paragraph 3 to read "Immediately upon receipt of such notification, the other party shall inform the party notifying that....."
- (c) Change the words "as soon as possible" in paragraph 4 to "immediately."

Paragraph 7—insert "about expenses" in between "agreement" and "it".

(12) *Arbitration :*

- (a) The Sub-Committee recommends that this part of the Model Contract form should include two more alternative paragraphs on the lines of paragraphs 18.3 and 18.4 of pages 236 and 237 of the Brief of Documents on International Sale of Goods which read as follows :

"18.3 The intervention of a circumstance falling under the definition of para-

graph 18.1 shall extend the time-limit for the execution of the contract by a period of time corresponding to the duration of the circumstance in question without the party being liable for damages.

18.4 Where the circumstances defined in paragraph 18.1 extend beyond a time-limit to be fixed by the parties in their contract, either party shall be entitled to terminate the contract without damages. Such time-limit may be the same for both parties or may differ for the seller and the buyer. In the event of the two time-limits not being the same, the party entitled to terminate the contract on expiry of the shorter time-limit shall immediately notify the other party by telegram of the decision he intends to take."

- (b) The Sub-Committee recommends that the Secretary-General should collect information from the various members of the Committee on the practices that obtain in their countries in relation to the question of arbitration clauses used in their contracts relating to the types of transactions intended to be governed by the proposed standard form of contract in order that the Sub-Committee may make further studies in this regard.

January 24, 1972