



“Working Together to Make Trade Work”

NAEGA MAP Trip Report –*International Seminar on Arbitration – Naples, Italy*

Name of Traveler: Sam Bonilla, Senior Advisor, NAEGA

Dates of Travel: September 6 – 11, 2016

Purpose of Travel:

Consistent with its UES objectives, Sam Bonilla, Senior Advisor for NAEGA, traveled to Naples, Italy on September 6-11, 2016 to present before and attend the 3rd Annual International Seminar on Arbitration, which was held at the Napoli Chamber of Commerce on September 8-11.

At the invitation of Mr. Roberto Rocco, a member of the Grain and Feed Trade Association’s (GAFTA) International Contracts Policy Committee (ICPC), Mr. Bonilla represented NAEGA and presented on “Dispute Resolution Clauses and Enforceability of Arbitral Awards in the World, Mainly in Europe and Far East.” Additionally, Mr. Bonilla participated in discussions, proposals and relevant possible conclusions on this topic.

During this mission, and in addition to his presentation, Mr. Bonilla also engaged with members of GAFTA, international contract experts and members of the global GRNOS trade to gather more information on the changing global contract environment and how it could affect the NAEGA No. 2 Model Contract and NAEGA members. As NAEGA’s leading expert on contract execution and enforcement, Mr. Bonilla works closely with the NAEGA Contracts Committee on issues related to the NAEGA No. 2 Model Contract and also leads NAEGA’s well respected “Contracts and Best Practices Seminars.”

Summary of Findings

The seminar “Dispute Resolution Clauses and Enforceability of the Arbitral Awards in the World, mainly in Europe and Far East” was held on September 8, 2016 at the Chamber of Commerce, Naples, Italy. It was well attended by approximately 125 participants. Many of those in attendance were from the legal and judiciary profession. Notably in attendance were Mr. Ettore Ferrara, President of the Tribunal of Naples and Mrs. Maria Rosaria Cultrera of the Court of Appeal of Naples, who have expressed a strong interest in the speeches given at the seminar. The seminar was moderated by Dr. Giovandomenico Lepore, President Corte Arbitrale. The sponsor of the seminar was Roberto Rocco, former GAFTA President and President and CEO of Rocco Giuseppe and Figli SPA. Mr. Rolfe Peters, GAFTA President and President of Ag Motion in



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Minneapolis, made opening remarks. Ms. Jaine Chisholm Caunt, Director General of GAFTA and Ms. Teresa Babuscio of COCERAL described the worldwide activities and roles of their respective organizations.

Overall, the seminar was highly successful in providing a broad perspective on the enforcement of arbitration awards from different points of view. It’s important to note that the vast majority of arbitration awards are complied with voluntarily. In many cases, due to the need for a continued commercial relationship, parties settle. Others, as pointed out in Mr. Martin Sage and Mr. Massimo G. Colozza’s speech, are shamed into settlement under the threat of publication in so called “defaulter’s list.” Arbitral awards also benefit from international treaties that provide highly effective methods of enforcement such as the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards. There are 157 signatories to date in the convention with about 40 states yet to ratify, most notably Taiwan, a major importer of grain. It was obvious from the presentations made that the success of this convention is the international policy favoring the enforcement of arbitral awards it has generated, as was very nicely pointed out by Mr. Colozzo. Most of the speakers also mentioned the rules that come into play and the grounds under which a court can refuse enforcement. Those are clearly and succinctly spelled out in articles V(1) and V(2) of the convention. The only requirement of the party seeking to enforce is to produce a duly authenticated original award or certified copy of the award and a copy of the original arbitration agreement or a certified copy thereof. However, notwithstanding the clarity, enforcement can still present a challenge to anyone seeking relief.

China has become a significant player in the global market and its purchasing of grains and oilseeds has increased significantly over the last few years, so it wasn’t unusual for some of the speakers to focus on such an important market. The general consensus among the speakers was that the judicial system in China has dramatically improved since joining the New York Convention in 1987. However, today the biggest problem isn’t dealing with the judicial process, it’s finding that after going through the lengthy process of enforcement, the losing party has somehow managed to dissolve or hide its assets.

In Italy, according to presentations made by Ms. Cristina Martinetti, Partner of ELEXI Studio Legale, and Mr. Roberto Rocco, recognition and enforcement of foreign awards has often proven to be complex and controversial. Mr. Rocco mentioned a case where a respondent domiciled in Italy was not given an opportunity by the Court of Appeal to defend an enforcement action. This occurred despite the fact that the court expedited the notification of enforcement together with a provisional execution without conducting a proper review of the facts.

Finally, while there were some problems highlighted by the speakers in the enforcement of awards in some countries, enforcement of arbitral awards still remains the main reason for arbitration clauses in contracts. However, both Mr. Sam Bonilla and Mr. Martin Sage, explained that enforcement of arbitral awards clearly begins at a much earlier stage. For example, an



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obvious but often overlooked priority, is to know as much as possible about your counterparty. Another key area is the choice of venue. Having a prime arbitration administrator will insure the process is flawless and that awards are primarily reviewed for matters that may affect enforceability. Nevertheless, it’s also critical at the outset that contracts include a well drafted arbitration clause.

Following the seminar, Mr. Roberto Rocco invited participants to attend a fundraiser at the restaurant Circolo Canottieri Napoli. We met Father Bruno who is leading a project in Madagascar to build a hospital named “John Paul II.” The project started in 2012 in Mahajanga and is expected to have about 120 rooms. A video of the project was presented and although much progress has been made, the project moves along quite slowly as the bulk of the construction is handmade and labor intensive. It was apparent that much help, both physical and financial, are needed to complete the project. I was very impressed by Father Bruno’s accomplishments and would encourage supporting this project.

On Saturday, September 11, 2016 all participants were invited to Mr. Rocco’s residence for a lunch meeting to discuss the seminar and outcomes. Unfortunately, Mr. Rocco fell ill and instead the seminar participants met at a local restaurant, “O Sole Mio” in Ischia.

Among some of the items that were brought to my attention during my visit were updates on GAFTA activities. Of interest was the mention of amendments to the GAFTA Arbitration Rules, GAFTA 125 effective, September 1, 2016. Probably the most significant change in the rules was the increasing the time limit for claiming arbitration for quality and condition disputes. The new GAFTA 125 arbitration rules increase the time limit to one year from 21 days. This should be welcomed by buyers as they will now have a lot longer to submit claims, but this may also incur an increase in claims for quality under GAFTA. Lengthening the time limits from 21 days to one year also harmonizes this clause of GAFTA disputes that had a one-year limit. Another item of interest is the controversy created by *Ramburs v Agrifert*, a GAFTA award that was raised to a court of appeal. This court case has many questioning the GAFTA 49 substitution clause in the contract and many feel it should be revised to avoid further problems. The GAFTA International Contracts Policy Committee (ICPC) will be reviewing this as soon as possible.

RECOMMENDATIONS:

- 1) Based on some of critical issues discussed at the seminar, NAEGA should create a “Contracts and Best Practices Seminar” focused on the enforcement of arbitral awards and how to best avoid the known pitfalls from the moment an arbitration is imminent.
- 2) NAEGA should also consider conducting a seminar on International Arbitration that may include such topics as:
 - a. International Arbitration Rules
 - b. AAA vs other International Arbitration venues

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- c. Procedure and costs
 - d. Awards and how enforced internationally
- 3) NAEGA should continue its leadership and support of activities with AAA/ICDR and their work in international arbitration.

Attachments:

- Agenda – 3rd Annual International Arbitration Seminar
- Speech – Roberto Rocco
- Speech – Sam Bonilla
- Speech – Martin Sage
- Speech – Massimo Colozza