



### **Request for Clarifications**

1. **With regards to the moot problem there is no mention of the place of destination by the buyer while applying DDP INCOTERM 2010, Please clarify as to what is to be considered for the same.**

The agreed place of destination while applying DDP Incoterm 2010 is the buyer's office.

2. **When the Tribunal refers to 'payment claims' in Ground (a) in procedural order 1, does it intend to include all four issues under Ground (c) as payment claims?**

**Rationale:**

**It is unclear what is included in the scope of the term 'payment'. It is necessary to know if it refers to monetary exchange only, or to insurance and the substantive issues with regards to payment (such as timing, method, conformity etc.).**

That is a matter that is potentially in dispute.

3. **In reference to Article 19(c) of the Sale and Purchase Agreements (Moot Problem pages 7, 12), what does 'the clause' refer to?**

**Rationale:**

**We need to know if it refers to the article itself or a separate clause so it can be accurately interpreted.**

'the clause' is intended to refer to Article 19.

4. **Was the same type of leather used for both the prototype and the final goods that were sent considering the Respondent said they felt different?**

**Rationale:**

**The Respondent claimed that the final products were "not as soft" as the prototype. We need to know if it indicates that a different type of leather was used (because that could lead to lack of conformity).**

The leather used was the same type for both the prototype and the final goods.

5. **Is Anastasia Carter the CEO of 'Ford Shipping Company' as is written in the letterhead on Moot Problem page 10, or is it meant to say 'Philip Park, CEO'?**

**Rationale:**

**It is necessary to know in reference to an argument about conflict of interest.**

The CEO of Ford Shipping Company is meant to say Philip Park.

- 6. Considering a second shipment of watchstraps was successfully received, can it be implied that there was an agreed place of delivery?**

**Rationale:**

**This is not evident in the contract, but can be evidenced by the facts.**

Yes. See clarification # 1

- 7. What does the wording 'any disputes' in Art 19(c) of the Sale and Purchase Agreement refer to?**

It has the same meaning, and can be read, as 'all disputes'.

- 8. Have the provisions of CISG been incorporated into the national law of Wulaba and to what extent?**

No

- 9. Applicable Law**

**In issue c. (p20 of the Moot Problem), CISG is assumed to apply in this case. We wonder whether other substantive law could apply as well.**

Should the parties consider that the CISG alone is insufficient to rely on, they may choose to rely on the UNIDROIT Principles of International Commercial Contracts 2010. The parties may also choose to rely on the Vienna Convention Law on the Law of Treaties of 1969

- 10. Word Count**

**Will the catalogue, list of abbreviation and index of authorities be part of the word count?**

No

- 11. Does the national law of Wulaba adopt any other law?**

The national law of Wulaba is an alter ego of the English Sale of Goods Act 1979, but there is a question as to whether there is any room to apply the national law of Wulaba.

- 12. Is CISG one of the sources of Wulaba law? If so, which has priority, CISG or national law of Wulaba / what does the rule of conflict law provide?**

No

- 13. Which party drafted Art. 19 of Sale and Purchase Agreement No. 1 and No. 2?**

The Respondent's lawyers drafted the Sale and Purchase Agreement No. 1. The lawyers were non-arbitration specialists, and were newly qualified. On 23 July 2014 the Seller suggested to the Buyer that the parties subject disputes to arbitration against the backdrop of lots of companies in various fields entering into arbitration agreements. The Respondent agreed orally to this suggestion. The Respondent subsequently shared the fact of this discussion with its lawyers. The

Respondent told its lawyers that it did not mind having an arbitration agreement, as it did not have any preference as to the dispute resolution forum. However the Respondent's lawyers knew that the Respondent in fact always liked to keep its options open, which is why the lawyers inserted Art 19(b) and (c) in the Agreement.

The Claimant drafted the Sale and Purchase Agreement No. 2. They did not instruct any lawyers to do so. They simply copied the Sale and Purchase Agreement No. 1, as they knew that the Respondent had used lawyers to draft it and made the necessary changes to reflect the terms of the Sale and Purchase Agreement No. 2. The Claimant noticed the word 'arbitration' in Art 19(a) and was content. The Claimant did not bother to read the rest of Art 19 as it had no legal background. It does not usually consult lawyers for simple sale and purchase agreements due to costs.

**14. Is there a contract or special agreement between Claimant and the shipment company? Is the word "we are not liable as per our terms and conditions" stated by the letter of shipment company (Claimant's Exhibit No.5) justified and lawful?**

There is a contract between the Claimant and the shipping company. The standard terms provided by the shipping company states that they are not liable for any damage or loss or late delivery, which was signed and accepted by the Claimant.

**15. What's the exact time Respondent paid the deposit on 31st July, 2014? Did the deposit reached Claimant's bank account immediately? If not, when did the deposit reach Claimant's bank account?**

The Respondent transferred the deposit on 31<sup>st</sup> July 2014 at 10am from its bank Banco de Uno, Mulaba branch in Wulaba. The Claimant received it at 10.05am on the very same day.

**16. Is it possible that watchstraps are influenced by the change of temperature and humidity during shipment?**

Whilst watchstraps generally can be slightly affected by temperature and humidity, this was not the case in this instance.

**17. Is the watchcase which Respondent delivered to Claimant the same size as Cherry watchcases of Respondent's distributor?**

There is no difference in size between the watchcase sent by the Respondent to the Claimant and the watchcase owned by Respondent's distributor.

**18. Since the case expresses "after doing the calculation and having increased the price by 50%, import duty is approx. 10% and VAT is approx. 5%", so what is the other expenses which take up 35% of the value of the goods? What fees are included by all related costs but excluded by the obligations of seller in DDP?**

The 35% comprises the Claimant's profit.

**19. Is there a third party checking the goods when it arrived the port of destination? Has Respondent checked all the goods delivered by Claimant or only a part of them?**

The Respondent's employees checked the goods when they arrived at the Respondent's warehouse that is connected to its office. It appears that the Respondent checked some pieces in every carton of every color watchstrap.

**20. What's the relationship between two Sale and Purchase Agreement? Is Agreement NO.2 taken as the additional or extending conditions of the original contract? Is there any conditions providing responsibility when goods are non-conformity?**

Agreement No. 2 is a standalone and separate transaction to Agreement No. 1. The only connection between the two is that the parties and the terms and conditions are the same.

**21. Have Respondent reached a contract with Cherry Watch?**

No, the Respondent has not contracted nor does it plan to contract with Cherry brand. The Respondent's intention was to supply to the Respondent's clients and other potential clients leather watchstraps that can fit the Cherry watches as a replacement. The aim was for the Respondent's clients to supply to consumers who wear Cherry watches, as after 6 to 8 months their watchstraps may become old or sweaty or may even tear, and they would not throw away their expensive Cherry watch but would replace their watchstrap. According to Respondent's calculation, the consumers should buy from the Respondent's clients as the prices of the watchstraps are competitive and there is a wide range of colors available.

**22. Till now, are there any other companies entering the market to corporate with Cherry Watch before Respondent?**

A few companies started selling replacement watchstraps for Cherry Watch around March 2015. However, they have limited colors and mostly in calf grain only.

**23. What are the parties' legal backgrounds? (legal system)**

Yanyu is governed by a civil law system. Wulaba is governed by a common law system.

**24. When did Yanyu and Wulaba become parties of CISG?**

Both Yanyu and Wulaba became Contracting States to the CISG in 2006 and 2007 respectively.

**25. What was the real reason that Respondent agreed to conclude the contract No. 2?**

The Respondent thought the quality of the prototype was excellent. On top of that, the price seemed attractive. Also, the Respondent showed to its main clients the prototypes who liked them very much. The Respondent's smart mobile phones business was slowly declining as many brands were moving towards watches, televisions, and even cars. The Respondent felt that the watchstrap replacement business would become a successful project which is why it invested in a website and arranged for high-end photos for the website. The Respondent even managed to

secure some orders from its clients based on the prototypes. The Respondent was hoping to eventually expand this new line to include replacement watchstraps for other smart phone watches.

**26. Have there ever been any disputes between Claimant and customers like the disputes in this case?**

The Claimant has almost never faced such kind of problem in 20 years as it mostly deals with its regular clients. On the rare occasion that a similar dispute as this occurred, the Claimant gave the same explanation as it did to the Respondent and the clients in that situation were very understanding of the Claimant's position. Occasionally, the Claimant will take on new clients but usually those new clients will have already been in the watchstrap industry. The clients know the distinction between the sampling stage and mass production. The Claimant has however, faced problems in the past when purchasing leather from tanneries for its watchstraps. An A4 (paper size) cutting of the leather would have one kind of grain but after importing a roll of the same leather, the Claimant noticed that there would be various grains and sometimes, a substantial part of the leather would look nothing like the A4 cutting. The response by the tanneries was that leather cannot be consistent and there was always some variation in grain as well as color. An A4 cutting would be considered a hand-made sample whereas the leather roll would be from the actual production.

**27. Did Respondent only have one watchcase or it could still get other watchcase?**

The Respondent could only procure one watchcase as the Cherry brand had only officially launched its watch collection for sale end of August 2014.

**28. Is Claimant facing any problem of its business?**

The Claimant does not have too many workers in its factory at the moment. Each year approximately 10% of the workers quit, hoping to work for factories belonging to big brands.

**29. Are there any conversations about the priority in three dispute resolution clause between both parties?**

See clarification # 13

**30. Which party drafted Art. 20 of the contract? What's the intention of the parties as they exclusively apply one side of the party's national law?**

The Respondent's lawyers inserted Art 20 as they did not want to be faced by surprise by having some other unknown and unfamiliar law applicable to the Agreement. The Claimant had read Art 20 and signed the Agreements even though it did not understand the purpose of Art 20. The Respondent assured the Claimant that it is a standard term and it would not make affect the Claimant.

**31. Does “within 14 days” include the fourteenth day?**

This is open to interpretation.

**32. Were there any practices between Respondent and its customers involving overseas shipment of goods? If there exist, who normally burden the insurance?**

The Respondent has been importing as well as exporting smart mobile phones since 2002. The burden of purchasing the insurance will usually depend on the deal struck between the exporter and the importer.

**33. In the past time, When Claimant signed DDP with the other party, have they ever purchased insurance?**

This was the first time for both the Claimant and the Respondent in dealing with DDP. The Claimant had heard first about this term from a business friend.

**34. When Claimant sent prototype to Respondent, did they send the watchcase together?**

No, the Claimant did not send the watchcase. The watchcase was stored in the in the Claimant's factory for safekeeping as per the Respondent's instruction.

**35. Has Respondent found other companies to produce watchstraps?**

The Respondent has not put in any effort of sourcing another supplier.

**36. Was Respondent really in great emergency when they signed the Sale and Purchase Agreement No.2?**

See clarification # 25.

**37. Do either Yanyu or Wulaba have any reservations against the CISG?**

Neither party has made any reservations.

**38. On page 16 of the Moot Problem, what does the sum of USD 17.4 million covers? Since we have done our calculation, and we could not reach the sum of USD 17.4 million.**

The Respondent had made the following payments:

- 20% of the Sale and Purchase Agreement No. 1 – USD3 million
- 80% of the Sale and Purchase Agreement No. 1 – USD12 million
- 20% of the Sale and Purchase Agreement No. 2 – USD2.4 million

**39. On page 16 of the Moot Problem, what does it mean by "development of website cost"?**

The Respondent arranged for expensive professional photos of the prototypes for its newly launched website. Also the Respondent arranged for an expensive designing company to create

the website with the latest type of software allowing the Respondent's customers to purchase via the website. The website would automatically calculate the shipment cost based on the quantity and the destination within a minute.

**40. On page 3 of the Moot Problem, in point 9 stated that Albas arrange for the watchstraps on 10th October 2014. Does it mean that Albas sent the watchstraps on that particular date?**

On 10<sup>th</sup> October 2014, the Claimant called the shipping company in the morning to collect the goods from the Claimant's warehouse which is part of the factory. The shipping company collected the goods on the very same day before noon. That evening the goods were loaded onto the vessel.

**41. In Respondent's Exhibit No.1, on 17 July 2014, GCT claimed they enclosed a Cherry watchcase to Albas. Did GCT in fact send a Cherry watchcase to Albas? If yes, did Albas later-on actually check if the watchstraps fit to the Cherry watchcase? If yes, when and how did Albas check the watchstraps? Did Albas send a confirmation to GCT on that?**

The Respondent had sent a Cherry watchcase to the Claimant. The Claimant sent the watchcase to its factory for production of the prototypes which were supposed to fit the watchcase. The factory manager in-charge of the watchcase had resigned the next day with immediate effect as she was offered a managerial role at a factory owned by a very big brand. It had taken the Claimant one month to find a replacement as they were busy with production of the orders. Production of the orders always took priority over production of prototypes. This was common practice for most factories. In the meantime one of the workers produced 8pcs. of the prototypes without being aware of the watchcase. The worker subsequently sent 6pcs. of the prototypes to the Claimant's office, as normally all prototypes are sent from the office instead of the factory. Upon receipt of the Respondent's approval, the Claimant informed its factory. Upon completion of the production of the goods, the factory manager checked that the size of the watchstraps did match the size of the 2pcs. of the prototypes in their possession.

**42. Were the prototypes GCT received on 15 August 2014 based on the Cherry watchcase sent on 17 July 2014? How many prototypes Albas provided to GCT? How the prototypes differed from each other?**

The prototypes received on 15 August 2014 were supposed to have been based on the Cherry watchcase sent on 17 July 2014. The Claimant had sent 6pcs, all with stitching:

- Calf grain: black-1pc, dark brown-1pc.
- Crocodile grain: black-1pc, dark brown-1pc
- Alligator grain: black 1pc, dark brown-1pc

**43. Did Albas send any new prototypes to GCT upon the second order? If not, did the first prototypes Albas sent to GCT on 17 July 2014 apply to the second order of the goods in the second shipment?**

Albas did not send new prototypes to GCT concerning the Sale and Purchase Agreement No. 2 as the first set of prototypes Albas sent to GCT applied to that Agreement.

**44. Did the parties mention anything on the prototype arrangement in the Sale and Purchase Agreements on 23 July 2014 and 7 November 2014 respectively anywhere from Art 6 to Art 18? If yes, what are the details of those Articles?**

No.

**45. According to the Moot Problem p.18, GCT claimed that "the goods do not correspond with the prototypes. The watchstraps are not as soft, nor do they look handmade." Did GCT make any request that the watchstraps should look handmade beforehand? If yes, was it communicated with Albas?**

During the conclusion of the Sale and Purchase Agreement no. 1, GCT did not make any request that the watchstraps should look handmade. GCT does not know much about watchstraps. It was only upon receipt of the prototypes did GCT acknowledge the quality of handmade watchstraps and assumed that the goods would correspond to the prototypes.

**46. Based on the sample watchstrap, could the buyer expect the final product to be of substantially different quality when taking into account the agreed price?**

It was GCT's first time dealing in watchstraps.

**47. The second Sale and Purchase Agreement (Exhibit No. 6) refers in its Article 3 to the "special price"; on what particular agreement is this special price based upon?**

The Claimant offered a special price to the Respondent. It was discussed over the phone, for the conclusion of the Sale and Purchase Agreement No. 2.

**48. Was the buyer aware of the watchstraps manufacturing process employed by purchaser?**

The Claimant had vaguely informed about its manufacturing process on 23 July 2014. The focus was more on the prices, minimum quantity, quality of the leather, and production time.

**49. Did the price list also include the reference to the handmade watchstrap models?**

No. There were no handmade watchstraps sent in response to the Respondent's request of 28 May 2014.

**50. When exactly was the goods from the second Sale and Purchase Agreement (Exhibit No. 6) taken over by the buyer?**

The Respondent received the goods on 26 January 2015.

**51. In what exact patterns did the sample watchstrap differentiate from the final product?**

The stitching on the samples was not on a straight line. There was not much glue used in the samples. The running stitches varied in length on the samples.



**52. What has happened with the goods delivered under the second Sale and Purchase Agreement (Exhibit No. 6); is it still in a disposition of the buyer or was it handed over to the purchaser?**

The Buyer offered to return them back to the Seller but the Seller rejected the idea.

**53. By what means and on what ground was the responsibility for the goods lost on the sea (i.e. the goods under the first Sale and Purchase Agreement) undertaken by the purchaser?**

The Respondent needed the goods. The Respondent requested that the deposit paid for the Sale and Purchase Agreement No. 1 be transferred to the Sale and Purchase Agreement No. 2. However, the Claimant rejected the idea. The Claimant was not interested in entering into any contracts with the Respondent until it received the balance payment for the Sale and Purchase Agreement No. 1 as the Claimant had to pay to its leather tanneries, workers, buckle suppliers, etc. Only upon receipt of the balance payment would the Claimant discuss the possibility of future Agreements.

**54. When did the buyer planned to introduce the respective watchstraps to the market?**

The Buyer had planned to introduce the watchstraps during the pre-Christmas sales, which is the usual booming period. Since the goods were lost and the Buyer had to re-order them, the plan was to introduce them in February 2015.

**55. Are we required to deal with the counterclaim compensation (b),(c)?**

Only where appropriate to do so.

**56. Do the parties need to argue on the basis that a specific provision of the CISG has not been invoked?**

Procedural Order no. 1, paragraph 4, (c) should be answered on the assumption that the CISG is in principle applicable to the contract. The parties may choose to rely on additional sources. See clarification # 9.

**57. Is “customer” a defined term between the PARTIES?**

Customer refers to the Buyer, in this case, the Respondent.

**58. Is there any evidence proving that the size of the goods conforms to the size of the prototypes?**

Yes.

**59. Are norms and principles of International law considered under the laws of Wulaba to form an integral part of the national law of Waluba?**

See clarifications # 8, 11, and 12.

**60. What does the national law of Wulaba say regarding the concept of liquidated damages?**

See clarification # 11.

**61. If the provisions of national law of Wulaba are similar to CISG, which one is more detailed related to the Problem?**

See clarification # 11.

**62. Has Wulaba made any reservations to the CISG terms?**

See clarification # 37.

**63. When the prototype was received by the Respondent, Gamma Celltech Co. Ltd., were they received in the watchcase that had been supplied by the Respondent to the Claimant, Albas Watchstraps Mfg. Co. Ltd., which was supplied in order to ensure correct sizing?**

See clarifications # 34 and 41.

**64. In respect of Article 5 of the Sales and Purchase Agreement, does 'provide a prototype for approval within 14 days from receipt of deposit' refer to the time frame for delivery by Claimant or receipt by Respondent?**

See clarification # 31.

**65. In respect of Article 5 of the Sales and Purchase Agreement, does 'within 14 days' mean on or before the 13th day?**

See clarification # 31.

**66. Have both Yanyu and Wulaba completed all processes to implement the CISG as part of their domestic law, in their respective countries?**

See clarifications # 8, 12, 37, and 56.

**67. Which clause does the term '[t]he clause' in article 19(c) of the Sales and Purchase Agreement refer to?**

See clarification # 3.

**68. On page 7 of the Moot Problem, Art. 19 of the Sales and Purchase Agreement, in the paragraph (c), which law does the clause means by "the laws of State of New York"?**

See clarification # 13.

**69. Which party proposed inserting Article 19 and 20 into the SPA?**

See clarification #30.

**70. Did the buyer have another Cherry Watch in its disposition?**

See clarification #27.

**71. Did the manufacturing process of producing watchstraps employed by the purchaser amount to the business custom within the market?**

The manufacturing process was not inconsistent with business custom.

**72. Is the national law of Wulaba based on the monistic or dualistic international law doctrine?**

It is not dualistic.

**73.**

**(i)**

**(a) Did the CLAIMANT check that if the prototypes fit the Cherry watchcase provided by the RESPONDENT before sending the prototypes to the RESPONDENT? Did the prototypes fit in with the watchcase?**

See clarification # 41.

**(b) When did the Respondent receive the prototypes? Was that on 14 August 2014 or 15 August 2014? Was there a time difference between the two countries?**

See clarification # 42. There is no time difference between Yanyu and Wulaba.

**(c) Is there any evidence proving that the size of the goods conforms to the size of the prototypes?**

Yes.

**(d) Did the RESPONDENT check whether the prototypes fit the watchcase upon receiving such prototype from the CLAIMANT?**

No.

**(ii)**

**(a) Is the watchcase provided by RESPONDENT the same with that to the distributors?**

See clarification # 17.

**(iii)**

**(a) Are there any indications as to the liability of Ford Shipping Company for the lost**

**goods? Were there any impediments beyond its control which it could not have reasonably taken into account at the time of the conclusion of the contract?**

See clarification # 14.

**(iv)**

**(a) Is “customer” a defined term between the Parties? Does it refer to the RESPONDENT or RESPONDENT’s customers (end users)?**

See clarification # 57.

**(b) Were there any communications between the PARTIES concerning the drafting of the Dispute Resolution clause for the Sale and Purchase Agreement No.1 & No.2?**

Yes.

**(c) Were there any communications between the PARTIES or background regarding the choosing of the laws of State of New York for interpretation of the Dispute Resolution clause?**

No.

**(d) Were there any communications between the PARTIES or background regarding the choosing of the courts of New York to settle disputes concerning the Dispute Resolution clause?**

No.

**(e) Does the term “any disputes” mean “any dispute concerning the clause” or “any dispute concerning the interpretation of the clause”?**

See clarification # 7.

**(f) What were the relevant facts regarding PARTIES’ negotiation on replacement shipment? In Sale and Purchase Agreement No. 2, the PARTIES did not explicitly mention RESPONDENT’s responsibility to cover the full payment for the lost goods. Were there any evidences proving that the replacement shipment was made with a condition of RESPONDENT’s taking responsibility of the full payment for the lost goods?**

See clarification # 53.

**(g) Did PARTIES reached a consensus on agree that RESPONDENT’s first payment was made only on the condition of a successful replacement transaction? Was there any relevant evidence?**

See clarification # 53 and refer to the moot problem.

**(v)**

**(a) Did Yanyu, Wulaba, Hong Kong adopt the UNIDROIT Principles on International Commercial Contracts as the general contract law?**

See clarification # 9.

**(b) Why “Claimant’s Exhibit No. 7” is not mentioned and cited in CLAIMANT’s Statement of Facts?**

It may be referred to for the purposes of the memoranda and/or oral rounds

**(c) Why “Respondent’s Exhibit No. 2” is not mentioned and cited in RESPONDENT’s Answer and Statement of Defense?**

It may be referred to for the purposes of the memoranda and/or oral rounds

**(d) Do we have to deal with the counterclaim compensation (b),(c)?**

See clarification # 55.

**(e) Why have not the RESPONDENT requested for the Tribunal to reject the claim for liquidated damages raised by the CLAIMANT?**

The Respondent can request so in their memoranda and/or oral rounds

**(f) On p. 20, why in the third line it says that there are 4 issues, whereas there are only 3 issues [a. b. c.] below?**

The 4<sup>th</sup> issue relates to the counterclaim compensation (b) and (c).

**(g) In Issue c., what does the word "invoked" mean? Does the CLAIMANT or the RESPONDENT need to argue on the basis that a specific provision of the CISG has not been invoked?**

See clarification # 56.

**(h) Should the structure of our memorandum be based on the PARTIES' Request for Relief or the Procedure Order No. 1, paragraph 4?**

See clarifications # 55 and 73(v)(f)