



## Twenty Fourth Annual Willem C. Vis International Commercial Arbitration Moot

April 7-13, 2017

### THE PROBLEM

Vienna, Austria  
October 2016 - April 2017

Oral Hearings  
April 8 – 13, 2017

Organised by:  
Association for the Organisation and Promotion of the  
Willem C. Vis International Commercial Arbitration Moot

And

Fourteenth Annual  
Willem C. Vis (East)  
International Commercial Arbitration Moot  
Hong Kong

Oral Arguments  
27<sup>th</sup> March – 2<sup>nd</sup> April, 2017

Organised by:  
Vis East Moot Foundation Limited

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*Horace Fasttrack*  
Advocate at the Court  
14 Capital Boulevard  
Oceanside  
Equatoriana  
Tel. (0) 214 77 32 Telefax (0) 214 77 33  
fasttrack@host.eq

31 May 2016

By courier

The President of the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (CAM-CCBC)  
Rua do Rocio, 220  
12º andar - cj.121  
São Paulo, SP 04552-000  
Brazil

Dear Mr Forbes,

On behalf of my client, Wright Ltd, I hereby submit the enclosed Request for Arbitration pursuant to Article 4 CAM-CCBC-Rules. A copy of the Power of Attorney authorizing me to represent Wright Ltd in this arbitration is also enclosed.

The registration fee has been paid. The relevant bank confirmation is attached.

The CLAIMANT requests outstanding contractual payments.

The contract giving rise to this arbitration provides that the seat of arbitration shall be Vindobona, Danubia, and that the arbitration shall be conducted in English. The arbitration agreement provides for three arbitrators. Wright Ltd hereby nominates Ms Martha Maracanã as its arbitrator and requests that the President of CAM-CCBC appoints the president of the arbitral tribunal if the party nominated arbitrators cannot agree on a president or directly, if RESPONDENT is in agreement with such a facilitated procedure. CLAIMANT requests on the basis of Article 4.15 that the third arbitrator should have a different nationality than any of the Parties.

The required documents are attached.

Sincerely yours,



Horace Fasttrack

Attachments:  
Statement of Claim with Exhibits  
Power of Attorney  
CV of Ms Martha Maracanã (not reproduced)  
Proof of Payment of Registration Fee (not reproduced)

31 May 2016

Horace Fasttrack  
Advocate at the Court  
14 Capital Boulevard  
Oceanside  
Equatoriana  
Tel (0) 214 77 32 Telefax (0) 214 77 33  
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The President of the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (CAM-CCBC)  
Rua do Rocio, 220  
12º andar - cj.121  
São Paulo, SP 04552-000  
Brazil

*Wright v. SantosD*

Request for Arbitration  
Pursuant to Article 4.1 CAM-CCBC Rules

Wright Ltd  
232 Garrincha Street  
Oceanside  
Equatoriana

- CLAIMANT-

Represented in this arbitration by Horace Fasttrack

SantosD KG  
77 Avenida O Rei  
Cafucopa  
Mediterraneo

- RESPONDENT-

**Statement of Facts**

1. Wright Ltd ("Wright"), the CLAIMANT, is a highly specialized manufacturer of fan-blades for jet engines, incorporated in Equatoriana.
2. SantosD KG ("SantosD"), the RESPONDENT, is a medium sized manufacturer of jet engines, incorporated in Mediterraneo. Until 2010 CLAIMANT and RESPONDENT were both subsidiaries of Engineering International SA, a multinational based in Oceania and active in various fields of engineering, in particular turbines of all sorts. Following the financial crisis in 2008 and the need to restructure its financing, Engineering International SA divested itself of several of its previously held subsidiaries to reduce its debts and to concentrate on its core business. In June 2010 CLAIMANT was sold to CLAIMANT's present parent company, which was then renamed Wright Holding PLC. RESPONDENT was sold one month later to SpeedRun, a Private Equity Fund.



3. At the time of their sale in 2010 CLAIMANT and RESPONDENT were in negotiations to jointly “develop” a new fan blade for the next generation of RESPONDENT’s high-spec jet engine, JE 76/TL14b. The fan blade was to be based on CLAIMANT’s newest model of swept fan blades, the TRF 192, which had been released few months earlier. The blades were to be included in the main fan at the engine inlet which accelerates the air rearwards. The improved fan blade, which was called TRF 192-I, was supposed to lead to a considerable noise reduction in RESPONDENT’s new JE 76/TL 14b engine. The objective was to reduce the noise emitted by 3db, which would make the JE 76/TL 14b quieter than any other available jet engine and would also provide for optimum engine core protection.
4. The engine was to be developed for use in the newest version of the signature executive line 100 jet of Earhart SP (“Earhart”), a world-wide operating aircraft manufacturer for medium size and range passenger and business jets. Earhart has a significant market share in this segment of the market, in particular for business jets. Earhart’s corporate philosophy emphasizes the sustainability of its developed aircraft. RESPONDENT had been particularly keen on the contract with Earhart since it would enable RESPONDENT to showcase its newly developed jet engine via a prestigious world renowned aircraft manufacturer.
5. The TRF 192-I was to be developed jointly under the technical leadership of CLAIMANT. RESPONDENT agreed to buy at least 2,000 of the swept fan blades in the first year. At the time the parties entered into the contract the final development and production costs for the new blade were not yet certain. Nevertheless, RESPONDENT insisted on fixing a maximum price to be paid, in order for it to be able to offer itself a price for the engine to Earhart (**file note Ms Maryam Filmas, production engineer, 1 May 2010, Claimant’s Exhibit C 1**). To reflect the uncertainty as to the actual production cost for the blades and to share the risks resulting from that the parties agreed on a flexible price structure for the fan blade. The purpose of this flexible price structure was to ensure, as far as possible, that both parties would generate a profit from the overall transaction and that RESPONDENT could already at that stage offer the engine at a largely fixed price to Earhart. Furthermore, RESPONDENT insisted on a price in US\$ though CLAIMANT’s production costs would be incurred in Equatorianian Denars(EQD).
6. In their Development and Sales Contract of 1 August 2010 (**Claimant’s Exhibit C 2**) RESPONDENT ordered 2,000 swept fan blades, model TRF 192-I, from CLAIMANT for a price per blade between US\$ 9,975 to US\$ 13,125. The price range in Section 4 of the Development and Sales Contract was determined on the basis of an estimate by CLAIMANT about the likely cost per blade to which a certain profit was to be added. This profit was to decrease with the increase of the costs. Given a production cost of US\$ 9,500 per blade a profit of 5% would be added but that profit component in the price would reduce to 0% if the unit-cost per blade was US\$ 13,125 or higher. US\$ 13,125 was the maximum price RESPONDENT would be required to pay per blade under normal circumstances. According to the agreed risk sharing structure of the agreement CLAIMANT had to bear the risk that the production cost would be actually above that maximum price, subject to the ordinary hardship defence.
7. CLAIMANT considered the risk to be minor that the contract would result in a loss due to actual costs of more than US\$ 13,125. Given the recent experience with the TRF 192 CLAIMANT estimated that the production costs per blade would be around EQD 20,000 (Equatorianian Denar). On the basis of the then prevailing exchange rate the costs in US\$ would have been around US\$ 10,000. The exchange rate had largely stayed the same for the last three years fluctuating between US\$ 1 = EQD 2.00 and US\$ 1 = EQD 2.02.
8. During the negotiations of the Development and Sales Contract RESPONDENT had already indicated that it might additionally need the same number of clamps connecting the blades to the shaft of the fans. Originally, RESPONDENT had intended to purchase the clamps from

another producer. When it turned out after the Development and Sales contract had been concluded that those clamps were not suitable and it became clear that RESPONDENT would have to buy the clamps from CLAIMANT, an addendum was added to the contract and signed by the parties. In the addendum the parties agreed that the clamps were to be delivered on a cost basis. Furthermore, upon RESPONDENT's insistence and deviating from the rules applicable to the price calculation for the fan blades, the parties agreed on a fixed exchange rate for the cost of the clamps.

9. The parties were successful in improving the TRF 192 so that the new TRF 192-I gave the required noise reduction. CLAIMANT delivered the fan blades and the clamps on 14 January 2015 to RESPONDENT as per contract and attached invoices for both goods. RESPONDENT accepted the delivery and after inspection confirmed that the swept fan blades, model TRF 192-I, and the clamps were in conformity with the contract (**Claimant's Exhibit C 3**).
10. Unfortunately, due to a mistake in CLAIMANT's accounting department, the invoice for the fan blades attached to the delivery was wrong. Instead of providing for a price US\$ 22,723,800 which was due under the Section 4 of the Development and Sales Contract, the invoice was only for US\$ 20,438,560. That was due to the fact that Mr Lee, the person responsible for creating the invoice, had first prepared the invoice for the clamps using the fixed exchange rate as under the addendum. When he then prepared the invoice for the fan blades, he applied the same fixed exchange rate, overlooking that for the price calculation for the fan blades the current exchange rate was to be applied (**Claimant's Exhibit C 4**).
11. Trying to take advantage of this obvious mistake RESPONDENT immediately paid the amount invoiced and informed CLAIMANT about the payments made. On 15 January 2015 Mr Cyril Lindbergh, RESPONDENT's Chief Financial Officer, emailed Ms Amelia Beinhorn, the COO of CLAIMANT, internally responsible for the TRF 192-I project, that he had effected payment of US\$ 20,438,560 and US\$ 183,343.28 to the CLAIMANT's account at the Equatoriana National Bank (**Claimant's Exhibit C 3**) for the fan blades and clamps respectively.
12. Immediately after receiving the email, Ms Beinhorn contacted Mr Lindbergh to clarify the mistake and to point out that on the basis of the formula agreed upon in the contract the costs per fan blade was US\$ 10,941.90, resulting in an overall purchase price for the 2,000 fan blades of US\$ 22,723,800 (**Claimant's Exhibit C 5**). RESPONDENT in verifying the price and making the transfer had applied the wrong exchange rate, assuming that the fixed exchange rate relevant for the clamps produced under the addendum was also relevant for the fan blades. It is uncontested that CLAIMANT incurred costs in the amount of EQD 19,586 per fan blade. On the basis of the correct exchange rate at the time of production the costs per blade in US\$ was 10,941.90 and not US\$ 9,744.28 as assumed by REPENDENT on the basis of the wrong exchange rate used also in our invoice.
13. On 29 January 2015 US\$ 20,336,367.20 was credited to the CLAIMANT's account at the Equatoriana National Bank. On 9 February 2015 Ms Beinhorn notified Mr Lindbergh by email that CLAIMANT was demanding the outstanding payment of US\$ 2,387,432.80 (**Claimant's Exhibit C 6**) by 4 March 2015.
14. In his reply of 10 February 2015 Mr Lindbergh denied that any additional purchase price payment was due (**Claimant's Exhibit C 7**). He reiterated RESPONDENT'S view, that the costs per fan blade was only US\$ 9,744.28 insisting again on the application of the fixed exchange rate set out in the addendum to the Development and Sales Contract, for converting the cost incurred by CLAIMANT in EQD into US\$.
15. Furthermore, Mr Lindbergh stated that RESPONDENT was not aware of any reason why US\$ 102,192.80 had been deducted from the US\$ 20,438,560 it had transferred.



16. An inquiry at the Equatoriana National Bank by Ms Beinhorn revealed that the Equatoriana Central Bank had investigated the payment for money laundering as per Regulation ML/2010C. An 0.5% levy was deducted as per Section 12 of the Regulation (**Claimant's Exhibit C 8**).
17. In line with the requirements in Section 21, CLAIMANT tried to resolve the dispute amicably. CLAIMANT made several offers combining a reduction in the sales prices for the 2,000 fan blades directly covered by the Development and Sales Agreement with a firm commitment for further fan blades to be delivered within the next five years. RESPONDENT, however, insisted on a costs of US\$ 9,744.28 per fan blade.

### **Nomination of Arbitrator**

18. In accordance with the arbitration clause in the contract and Article 4.4 of the CAM-CCBC Rules we appoint Ms Martha Maracanã, 41 Azteka Lane, Oceanside, Equatoriana, for confirmation by the Secretariat. As Ms Maracanã is not on the List of Arbitrators her résumé is attached.

### **Legal Evaluation**

#### **Jurisdiction**

19. The Arbitral Tribunal has jurisdiction over the dispute by virtue of the arbitration agreement contained in Section 21 of the contract between CLAIMANT and RESPONDENT [**Claimant's Exhibit C 1**]. The clause provides as follows:

#### **Section 21: Dispute Resolution**

All disputes arising out of or in connection with this Agreement shall be settled amicably and in good faith between the parties. If no agreement can be reached each party has the right to initiate arbitration proceedings within 60 days after the failure of the negotiation to have the dispute decided by an arbitrator. The arbitration shall be conducted under the Rules of the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada ("CAM-CCBC") and in line with international arbitration practice.

The Arbitral Tribunal shall consist of three arbitrators, appointed in accordance with the Rules of CAM-CCBC. The Parties may select arbitrators who are not on the List of Arbitrators maintained by CAM-CCBC. The President of the Arbitral Tribunal shall be appointed by the President of CAM-CCBC.

The seat of arbitration shall be Vindobona, Danubia. The arbitration proceedings shall be conducted in English

### **Merits**

20. The CLAIMANT is entitled to the full payment of the purchase price in accordance with Articles 62, 53, 54 CISG.
21. The parties had agreed on a specific method to calculate the purchase price as set out in Section 4 of the Development and Sales Contract of 1 August 2010 (**Claimant's Exhibit C 1**). In the aircraft industry joint developments of parts with a certain type of risk sharing are normal. In the present case, however, RESPONDENT insisted on fixing a maximum price at a time when relevant factors for determining a price, in particular the costs incurred for the production per blade could only be estimated. Consequently, the parties agreed on a price



formula which fulfilled three objectives. First, it ensured that RESPONDENT – in the absence of unforeseen extraordinary circumstances – would not have to pay more than US\$ 13,125 per blade. Second, it ensured that below that price CLAIMANT would at least cover its costs and make some profit. Third, it contained an incentive for CLAIMANT to keep the costs as low as possible, as its profit would increase with the decreasing of the costs. A comparable provision had already been used by the parties during their earlier co-operations when both were still subsidiaries of Engineering International SA.

22. To attain the second objective of the price calculation, it is necessary that the actual costs are reimbursed as they are incurred. Thus, if such costs are to be converted into US\$ the current rate must be applied. By contrast RESPONDENT, trying to take advantage of the obvious calculation mistake in the first invoice, has based its determination of the price on the wrong and not tenable assumption that the Parties had agreed on a fixed exchange rate of US\$ 1= EQD 2.01. Such a fixed exchange rate was, however, only agreed for the clamps where the influence of the exchange rate was limited due to the much lower amount. It does not apply for the fan blades. CLAIMANT is paying all its employees in Equatorianian Denars (EQD) and would not have agreed to be burdened with the full exchange rate risk for the full contract. Thus, the fixed exchange rate is limited to the items covered by the addendum. In the meantime, the US\$ has fallen in comparison to the Equatorian Denar and the present exchange rate is US\$ 1 = EQD 1.79.
23. Articles 53, 54 CISG entitle the seller, ie the CLAIMANT, to the full purchase price. The buyer has to bear any costs associated with payment of the purchase price. This includes any costs associated with administrative regulations. Therefore, the RESPONDENT has to bear the levy charged by the Financial Investigation Unit for investigating the purchase price payment for money laundering.

#### **Statement of Relief sought:**

On the basis of the above CLAIMANT requests the Arbitral Tribunal to:

1. order RESPONDENT to pay the still outstanding purchase price in the amount of US\$ 2.285.240 and the bank charge in the amount of US\$ 102,192.80.
2. order RESPONDENT to bear the costs of the arbitration.



Horace Fasttrack

Enclosures: Claimant's Exhibits C 1 – C 8



*1 May 2010 Summary Notes*

*Meeting today with Celia Fang, Development Manager, SantosD KG, to discuss details about jointly improving our TRF 192 to a new swept fan blade TRF 192-I to be then produced by us for inclusion into SantosD's new engine JE 76/TL14b. TRF 192 series needs adjustment so that noise level in SantosD engine JE 76/TL14b will be reduced by 3db.*

*Agreed on the following basic principles for our cooperation in regard to development:*

*Fan blade to be developed on basis of TRF 192; IP rights in final product TRF 192-I remain with us. Both development units will regularly meet and transfer necessary data.*

*Once a week meeting via Zoom - both production teams*

*Fang insists that maximum price (subject to adjustment only in extraordinary unforeseeable circumstances) has to be fixed already in contract to allow SantosD to make a binding offer including a price for its engine to Earhart SP although the final production costs for the fan blades are not yet known.*

*To make determination of maximum price possible flexible price structure as for the purchase of the jointly improved fans TRF 163-I and TRF 150-II must be agreed on a "cost + basis" with risk sharing elements. Verify whether contractual provisions in one of the previous contracts can be used for our contract*

*SantosD insisted on pricing in US\$. Our expenses in EQD will have to be converted but no major risk involved. Exchange rate should be around 2-1 and has been very stable over the last years.*

## CLAIMANT's EXHIBIT C 2

### DEVELOPMENT AND SALES AGREEMENT

Whereas reduction of fuel consumption and noise emission are generally acknowledged objectives of all aircraft producers.

Whereas Earhart SP has recently specified the requirements for the engines for its newly developed signature executive line 100 business jet.

Whereas SantosD KG as one of the leading jet engine producers has decided to develop an engine fulfilling such requirements and to offer it to Earhart SP for incorporation into the new jet.

Whereas Wright Ltd, has recently presented to the market its TRF 192 swept fan blade for jet engines, which is presently the most advanced fan blades as far as consumption is concerned.

Whereas both parties agree that a modified version of the TRF 192, leading to further noise reduction, should be developed and incorporated into the new engine

Whereas both parties have a joint interest in developing the fan blade together for incorporation into SantosD KG's new JE 76/TL14b engine and eventually into other engines.

Whereas Wright Ltd will then produce the newly developed fan blade and sell it at the agreed price to SantosD KG.

Whereas SantosD is planning to purchase within the next 5 years more than 600 further TRF 192-I fan blades in accordance with the provisions below or comparable provisions provided that the TRF 192-I complies with the specification set out in Annex I of this contract.

### Section 1 PARTIES

Seller: Wright Ltd, 232 Garrincha Street, Oceanside Equatoriana, telephone (0) 214-8803, fax (0) 214-8804, email [secretariat@wright.eq](mailto:secretariat@wright.eq), represented by Sacadura Coutinho, Chief Executive of Wright Ltd.

and

Buyer: SantosD KG, 77 Avenida O Rei, Cafucopa, telephone (0) 146- 9128, fax (0) 146 -5634, email [info@SantosD.me](mailto:info@SantosD.me), represented by Yan Malmesbury, Chief Executive of SantosD KG.

Collectively "the Parties"

### Section 2 BACKGROUND

1. The Parties agree to jointly develop on the basis of the Seller's most recent TRF 192 fan blade an improved new version, the TRF 192-I, for inclusion into the Buyer's JE 76/TL14b jet engine to be used for the new Earhart signature executive line 100 business jet.
2. The SELLER undertakes, as part of its business, the subsequent manufacturing and delivery of the newly developed TRF 192-I swept fan blade.

3. The BUYER undertakes to purchase a minimum of at least 2,000 fan blades under this Agreement, expressing at the same time the firm intention to purchase further units in subsequent years.

### **Section 3 DELIVERY**

1. The SELLER agrees to produce and deliver 2,000 TRF 192-I swept fan blades by 14 January 2015.  
[...]

### **Section 4 PURCHASE PRICE**

1. The purchase price is calculated on a cost-plus basis according to the following formula
  - Production Costs per blade  $\leq$  9,500 US\$: 9,975 US\$
  - Production Costs per blade: 9,500 – 10,500 US\$: Costs + 475 US\$ (5% of 9,500)
  - Production Costs per blade: 10,501 – 11,500 US\$: Costs + 420 US\$ (4% of 10,500)
  - Production Costs per blade: 11,501 – 12,000 US\$: Costs + 345 US\$ (3% of 11,500)
  - Production Costs per blade: 12,001 – 12,500 US\$: Costs + 240 US\$ (2% of 12,000)
  - Production Costs per blade: 12,501 – 13,000 US\$: Costs + 125 US\$ (1% of 12,500)
  - Production Costs per blade  $\geq$  13,125 US\$: 13,125 US\$

The minimum price per fan blade irrespective of production costs is US\$ 9,975 while the maximum price to be charged per fan blade is US\$ 13,125.

Should the production costs per fan blade exceed US\$ 13,125 due to extraordinary unforeseeable circumstances and result in unbearable hardship for the Seller the Parties will enter into good faith negotiations to determine a price which is financially acceptable to both parties.

2. The price is due upon delivery of the fan blades and payment should be confirmed by the BUYER as soon as possible.
3. The BUYER will deposit the purchase price in full into the SELLER's account at the Equatorian National Bank, Ocean Promenade 3, Equatoriana, IBAN 1209 3456 6798; SWIFT EQXPL6. The bank charges for the transfer of the amount are to be borne by the BUYER.

[...]

### **Section 20 CHOICE OF LAW**

This Agreement is governed by the UN Convention on the International Sale of Goods ("CISG"). For issues not dealt with by the CISG the UNIDROIT Principles are applicable.

### **Section 21 DISPUTE RESOLUTION**

All disputes arising out of or in connection with this Agreement shall be settled amicably and in good faith between the parties. If no agreement can be reached each party has the right to initiate arbitration proceedings within sixty days after the failure of the negotiation to have the dispute decided by an

arbitrator. The arbitration shall be conducted under the Rules of the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (“CAM-CCBC”) and in line with international arbitration practice.

The Arbitral Tribunal shall consist of three arbitrators, appointed in accordance with the Rules of CAM-CCBC. The Parties may select arbitrators which are not on the List of Arbitrators maintained by CAM-CCBC. The President of the Arbitral Tribunal shall be appointed by the President of CAM-CCBC.

The seat of arbitration shall be Vindobona, Danubia.

The arbitration proceedings shall be conducted in English.

1 August 2010

*[Signature]*

Sacadura Coutinho

*[Signature]*

Cyril Lindbergh

*Addendum of 26 October 2010 (handwritten)*

*The Buyer may request the Seller to produce and deliver 2,000 clamps to attach the fan blades to the fan shaft. The Price for the clamps shall be on a cost coverage base and be paid in US\$.*

*Other terms as per main Agreement.*

*The exchange rate for the agreement is fixed to US\$ 1= EQD 2.01.*

*26 October 2010*

*Amelia Beinhorn*

*Cyril Lindbergh*

CLAIMANT's EXHIBIT C 3



Fri 15/01/15 11:23 a.m.

Cyril Lindbergh

To [secretariat@wright.eq](mailto:secretariat@wright.eq)  
From [info@SantosD.me](mailto:info@SantosD.me)  
Re Payment TRF 192-I

Dear Ms Beinhorn

I herewith confirm that yesterday we received the blades and the clamps in good order. A first examination revealed no problems.

On the basis of the invoices received we have effected the following two payments to Wright's bank account, IBAN 1209 3456 6798, at Equatoriana National Bank, Ocean Promenade 3, Equatoriana

- US\$ 20,438,560 for the fan blades
- US\$ 183,343.28 for the clamps

As requested two separate payments have been made.

Sincerely,

Cyril Lindbergh

SantosD KG  
77 Avenida O Rei  
Cafucopa  
Mediterraneo  
T (0) 146-9128  
Fax (0) 146-5634

#### CLAIMANT's EXHIBIT C 4

Witness Statement Mario Lee

My name is Mario Lee, born 25 August 1989, in Oceanside, Equatoriana.

I have a degree in financial accounting from Good Hope College and have worked since 1 August 2014 in the accounting department of Wright Ltd.

On 9 January 2015 I was asked by Ms Beinhorn to prepare the two invoices for the fan blades and the clamps to be delivered to SantosD. In principle, my colleague Ms Kwang was responsible for the financial side of the contract. She had reported in sick on 29<sup>th</sup> December and in early January the date of her return was not yet predictable. Consequently, Ms Beinhorn had asked me to finalize the two invoices before I went for a long weekend to visit my parents the same evening. She had given me excel files with the costs incurred per fan blade and per clamp as well as Ms Kwang's binder concerning the blade project containing all correspondence and the Development and Sales Agreement.

I was under considerable time pressure. I had no knowledge about the whole transaction and it was the last working day before my holiday. First, I prepared the invoice for the clamps as the order for the clamps and a note that a fixed exchange rate had been agreed for them had been on top of Ms Kwang's binder. I took the costs as reported in the excel file and converted them on the basis of the fixed exchange rate of US\$ 1 = EQD 2.01 as was stated in the addendum of the contract. When I prepared the invoice for the fan blades, I used the same exchange rate for the calculation of the price for the fan blades, not realizing that the main contract relating to the blades did not contain a fixed exchange rate but only the addendum relating to the clamps.


On 15 January 2015, my first working day after two days of holidays, Ms Beinhorn informed me about the mistake and asked me to prepare a correct invoice for the fan blades applying the current exchange rate of US\$ 1 = EQD 1.79.


Oceanside, 24 May 2016

*[Signature]*

Mario Lee



<div style="text-align: right;">Fri 15/01/15 12:46 p.m.</div> <div><div style="margin-left: 20px;"><b>Amelia Beinhorn</b></div></div>	
To	<a href="mailto:info@SantosD.me">info@SantosD.me</a>
From	<a href="mailto:secretariat@wright.eq">secretariat@wright.eq</a>
Re	Payment TRF 192-I
<p>Dear Mr Lindbergh,</p> <p>I refer to your email from earlier today. I have realized that there has been a mix up in our accounting department with the invoice for the fan blades. Unfortunately, the price per fan blade has been calculated on the basis of the fixed exchange rate which we agreed for the clamps in the addendum to the contract of 26 October 2010.</p> <p>As per our contract negotiations and Section 4 of our Development and Sales Agreement the contract price is calculated on an actual cost plus profit basis. As you can see from the attached table the costs per fan blade amount to EQD 19,586. Multiplied with the current exchange rate, which is identical to that at the time of production of US\$ 1 = EQD 1.79, the costs are US\$ 10,941.90 per blade. Consequently, the full purchase price for the 2,000 blades amounts to US\$22,723,800.</p> <p>I apologize for the mistake and have attached a corrected invoice for the fan blades. Please effect payment of an additional US\$ 2,285,240 to our account. We will naturally bear all the additional costs which may result from that additional transfer.</p> <p>Sincerely,</p> <p>Amelia Beinhorn</p> <p>Wright Limited 232 Garrincha Street Oceanside, Equatoriana T (0) 214-8803 F (0) 214-8809</p>	

 <p>Tue 9/02/15 10:46 a.m.</p> <p><b>Amelia Beinhorn</b></p>	
To	<a href="mailto:info@SantosD.me">info@SantosD.me</a>
From	<a href="mailto:secretariat@wright.eq">secretariat@wright.eq</a>
Re	Payment TRF 192-I
<p>Dear Mr Lindbergh,</p> <p>We have not received the outstanding purchase price of US\$ 2,285,240 from you. In addition, we just got confirmation from our bank that only US\$ 20,336,367.20 was credited to our account.</p> <p>Therefore, we ask that the outstanding US\$ 2,387,432.80 is deposited into our bank account by 4 March 2015.</p> <p>We would very much appreciate prompt payment. As you know we are presently in the final development phase of the TRF-305 fan for small engines which has put the usual strain on our liquidity.</p> <p>Sincerely,</p> <p>Amelia Beinhorn</p> <p>Wright Limited 232 Garrincha Street Oceanside, Equatoriana T (0) 214-8803 F (0) 214-8809</p>	

CLAIMANT's EXHIBIT C 7



Wed 10/02/15 9:23 a.m.

Cyril Lindbergh

To [secretariat@wright.eq](mailto:secretariat@wright.eq)  
From [info@SantosD.me](mailto:info@SantosD.me)  
Re Payment TRF 192-I

Dear Ms Beinhorn,

We do not have any idea why only US\$ 20,336,367.20 was credited to Wright's account at the Equatoriana National Bank. We did effect payment of US\$ 20,438,560. We contacted our bank and the transfer was made to the bank account stipulated in the Development and Sales Agreement of 1 August 2010.

In regard to the purchase price for the swept fan blades TRF 192-I, your original invoice correctly reflected our contractual agreement. In the addendum to the contract we agreed on a fixed exchange rate of US\$ 1 = EQ 2.01. When we negotiated the addendum the agreement on the fixed exchange rate pertained not only the clamps but the whole contract.

Applying that exchange rate to the costs of EQD 19,586 we arrive at a cost in US\$ per blade of US\$ 9,744.28, as correctly stated in your original invoice sent with the blades.

By contrast your "allegedly" corrected invoice of 15 January 2015 applies a wrong rate. We would have never agreed on a floating rate applying the current rate to convert your costs into US\$. In our view, you had taken over the currency risk.

Sincerely,

Cyril Lindbergh

SantosD KG  
77 Avenida O Rei  
Cafucopa  
Mediterraneo  
T (0) 146-9128  
Fax (0) 146-5634



Equatoriana  
Central Bank

Dear Ms Beinhorn,

Thank you for your inquiry in regard to the receipt of US\$ 20,438,560 from SantosD KG, Mediterraneo.

We can confirm that SantosD KG effected the payment of US\$ 20,438,560 to your account. However, under Section 5 Regulation ML/2010C since the payment exceeded US\$ 2 million the Financial Investigation Unit investigated the payment in regard to money laundering. Under Section 12 Regulation ML/2010C the Financial Investigation Unit subtracts a 0.5% levy from every sum of money investigated.

*[Signature]*

Dr. Sokrates  
(Legal Department)

# Power of Attorney

In the matter of  
*Wright Holding Plc*

---

(„Clients“)

versus

*SantosD*

in respect of a contract

Mr Horace Fasttrack

(„Lawyer“)

is hereby granted unrestricted Power of Attorney to represent the Clients vis-à-vis third parties both before court and outside of court, in particular, before courts and authorities of all instances. The Lawyers shall, inter alia, be entitled to deliver declarations, including unilateral declarations such as termination notices, challenges, set-off declarations or declarations of rescission. This Power of Attorney encompasses the initiation, the withdrawal and

the limitation of legal remedies and procedures of whatever kind as well as the decision not to pursue these. This Power of Attorney also encompasses collateral proceedings, in particular, seizure, injunction, taxation of costs, enforcement of judgement as well as insolvency proceedings and family matters. In addition, this Power of Attorney encompasses the conclusion of settlements and declarations of waiver and renunciation as well as of acknowledgement.

The Lawyer shall be entitled to grant sub-Powers of Attorney.

The Lawyer shall be entitled to accept items and assets of whatever kind on behalf of the Clients.

The Lawyer is authorized to serve and to accept legal documents of whatever kind in respect of any kind of legal proceedings.

Any claims for reimbursement of costs are hereby assigned to the Lawyer.

The grant of this Power of Attorney shall thereby approve any actions already undertaken by the Lawyer.

The contents and the validity of this Power of Attorney are subject to the law of Equatoriana.

*Oceanside, Equatoriana*

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Place

*2 April 2016*

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Date

*Dr Katja Yamamoto (CEO)*

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Signature



**Arbitration Proceeding Nr. 200/2016/SEC7**

**Claimant:** Wright Ltd  
**Respondent:** SantosD KG

**Order of the President of the CAM-CCBC**

1. On 31 May 2016, the CAM-CCBC received a request for arbitration from Wright Ltd against SantosD KG.

2. The Secretariat, upon analyzing the content of the Request for Arbitration in order to certify the fulfillment of the requirements set forth in Article 4.1<sup>1</sup> of the Rules, verified that:

- (i) the Power of Attorney presented referred to Wright Holding Plc instead of Wright Ltd, Claimant in the dispute;
- (ii) the registration fee was paid in the amount of R\$ 400.00 (four hundred Brazilian Reais), rather than R\$ 4,000.00 (four thousand Brazilian Reais) as provided for in the CAM-CCBC Table of Expenses.

3. Before the Secretariat sends a notice to the opposing party, in accordance with Article 4.3<sup>2</sup> of the Rules, Claimant must first amend the Request for Arbitration within 10 (ten) days and provide evidence that all the requirements of Article 4.1 have been complied with.

São Paulo, 01 June 2016.



Carlos Suplicy de Figueiredo Forbes  
President of the CAM-CCBC

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<sup>1</sup> CAM-CCBC Rules, Article 4.1. The party desiring to commence an arbitration will notify the CAM-CCBC, through its President, in person or by registered mail, providing sufficient copies for all the parties, arbitrators and the Secretariat of the CAM-CCBC to receive a copy, enclosing: (a) A document that contains the arbitration agreement, providing for choice of the CAM-CCBC's to administer the proceedings; (b) A power of attorney for any lawyers providing for adequate representation; (c) A summary statement of the matter that will be the subject of the arbitration; (d) The estimated amount in dispute; (e) The full name and details of the parties involved in the arbitration; and (f) A statement of the seat, language, law or rules of law applicable to the arbitration under the contract.

<sup>2</sup> CAM-CCBC Rules, Article 4.3. The Secretariat of the CAM-CCBC will send a copy of the notice and respective documents that support it to the other party, requesting that, within fifteen (15) days, it describe in brief any matter that may be the subject of its claim and the respective amount, as well as comments regarding the seat of arbitration, language, law or rules of law applicable to the arbitration under the contract.



*Horace Fasttrack*  
Advocate at the Court  
14 Capital Boulevard  
Oceanside  
Equatoriana  
Tel. (0) 214 77 32 Telefax (0) 214 77 33  
fasttrack@host.eq

7 June 2016

By courier

The President of the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (CAM-CCBC)  
Rua do Rocio, 220  
12º andar - cj.121  
São Paulo, SP 04552-000  
Brazil

Dear Mr Forbes,

Please find attached the required power of attorney of Wright Ltd, the CLAIMANT in the above arbitration.

As correctly pointed out by you, the original power of attorney had been signed on behalf of Wright Holding PLC. It is the parent company of Wright Ltd and had originally approached me to prepare the claim in the arbitration. Notwithstanding that all important decisions are taken at the level of the Holding, for the sake of good order I have procured the attached power of attorney directly from Wright Ltd.

Moreover, the remainder of the Registration Fee has been paid. The lower amount was due to a mistake in my secretariat for which I apologize.

Could I ask you to now inform SantosD KG about our request for arbitration and take the necessary steps for the constitution of the Tribunal?

Sincerely yours,



Horace Fasttrack

# Power of Attorney

In the matter of

*Wright Ltd*

---

(„Clients“)

versus

*SantosD*

in respect of a contract

Mr Horace Fasttrack

(„Lawyer“)

is hereby granted unrestricted Power of Attorney to represent the Clients vis-à-vis third parties both before court and outside of court, in particular, before courts and authorities of all instances. The Lawyers shall, inter alia, be entitled to deliver declarations, including unilateral declarations such as termination notices, challenges, set-off declarations or declarations of rescission. This Power of Attorney encompasses the initiation, the withdrawal and

the limitation of legal remedies and procedures of whatever kind as well as the decision not to pursue these. This Power of Attorney also encompasses collateral proceedings, in particular, seizure, injunction, taxation of costs, enforcement of judgement as well as insolvency proceedings and family matters. In addition, this Power of Attorney encompasses the conclusion of settlements and declarations of waiver and renunciation as well as of acknowledgement.

The Lawyer shall be entitled to grant sub-Powers of Attorney.

The Lawyer shall be entitled to accept items and assets of whatever kind on behalf of the Clients.

The Lawyer is authorized to serve and to accept legal documents of whatever kind in respect of any kind of legal proceedings.

Any claims for reimbursement of costs are hereby assigned to the Lawyer.

The grant of this Power of Attorney shall thereby approve any actions already undertaken by the Lawyer.

The contents and the validity of this Power of Attorney are subject to the law of Equatoriana.

*Oceanside, Equatoriana*

---

Place

*5 June 2016*

---

Date

*Beinhorn (COO)*

---

Signature

São Paulo, 08 June 2016.

SantosD KG  
77 Avenida O Rei  
Cafucopa, Mediterraneo

**Re: Notice for Commencement of Arbitration Proceeding**  
Arbitration Proceeding Nr. 200/2016/SEC7  
Claimant: Wright Ltd  
Respondent: SantosD KG

Dear Sirs,

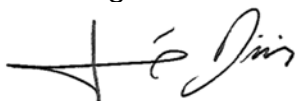
On 31 May 2016, the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada ("**CAM-CCBC**") received the attached Request for Arbitration, presented by Wright Ltd ("**Claimant**") against SantosD KG ("**Respondent**"). The original Request for Arbitration was supplemented on 07 June 2016 to comply with the requirements of Article 4.

Therefore, pursuant to Article 4.3<sup>1</sup> of the CAM-CCBC Arbitration Rules, effective from 01 January 2012<sup>2</sup> ("**Rules**"), the Secretariat invites you to describe in brief the nature and circumstances of the dispute giving rise to the claims, the basis upon which the claims are made and their respective amount. We also invite you to comment on the place of arbitration, language, law or rules of law applicable to the arbitration. The description in brief and any additional comments must be received within fifteen (15) days.

In light of the appointment of the arbitrator presented by Claimant in its Request for Arbitration, the CAM-CCBC also invites Respondent to appoint its arbitrator pursuant to Article 4.4 of the Rules<sup>3</sup>.

Please do not hesitate to contact us for further inquiries.

Kind regards,



Case Manager

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<sup>1</sup> CAM-CCBC Rules, Article 4.3. The Secretariat of the CAM-CCBC will send a copy of the notice and respective documents that support it to the other party, requesting that, within fifteen (15) days, it describe in brief any matter that may be the subject of its claim and the respective amount, as well as comments regarding the seat of arbitration, language, law or rules of law applicable to the arbitration under the contract.

<sup>2</sup> Please find attached a copy of the Rules and a copy of the List of Arbitrators.

<sup>3</sup> CAM-CCBC Rules, Article 4.4. The Secretariat of the CAM-CCBC will send both parties a copy of these Rules and the list of the names of the members of the List of Arbitrators, inviting them to, within fifteen (15) days, each appoint one (1) arbitrator and, optionally, one (1) alternate to constitute the Arbitral Tribunal.

*Joseph Langweiler*  
Advocate at the Court  
75 Court Street  
Capital City  
Mediterraneo  
Tel. (0) 146-9845 Telefax (0) 146-9850  
Langweiler@lawyer.me

24 June 2016

By courier

The President of the Center for Arbitration and Mediation of the Chamber of Commerce  
Brazil-Canada (CAM-CCBC)  
Rua do Rocio, 220  
12º andar - cj.121  
São Paulo, SP 04552-000  
Brazil

*Wright v. SantosD*

Answer to Request for Arbitration  
Pursuant to Article 4.3 CAM-CCBC Rules

Wright Ltd  
232 Garrincha Street  
Oceanside  
Equatoriana

- CLAIMANT -

Represented in this arbitration by Horace Fasttrack

SantosD KG  
77 Avenida O Rei  
Cafucopa  
Mediterraneo

- RESPONDENT -

Represented in this arbitration by Joseph Langweiler

**Introduction**

1. In its Statement of Claim, CLAIMANT presents a largely accurate picture of the facts. From such facts, CLAIMANT draws, however, completely wrong legal conclusions.
2. The claims raised by CLAIMANT in this arbitration are neither admissible nor justified. RESPONDENT has fulfilled all its payment obligations under the contract

## Nomination of Arbitrator and Jurisdiction of Arbitral Tribunal

3. RESPONDENT recognizes the jurisdiction of the Arbitral Tribunal and has no objection to the appointment of Ms Maracanã and agrees that the President of the Tribunal is to be appointed directly by CAM-CCBC.
4. RESPONDENT nominates as its arbitrator in this case Prof. Lena Chowdry, 25 Rue Nascimento, 23 OK 40 Rasunda, Mediterraneo. As Prof. Chowdry is not on the List of Arbitrators her résumé is attached.

## Statement of Facts

5. In January 2010, RESPONDENT received a notice from Earhart SP that the company was planning a new signature line 100 executive jet and was looking for quotes for the engine for the jet. The notice contained fairly detailed requirements as to the performance of the engine. Particular focus was put the low fuel consumption and noise reduction.
6. After some initial research it became clear to RESPONDENT that the requested specification could not be attained with any of its existing engines and the fan blades available on the market. Consequently, in Spring 2010 RESPONDENT contacted CLAIMANT to discuss with CLAIMANT the joint development of a new fan blade on the basis of CLAIMANT's newest model TRF 192. The new fan blade was to be included into RESPONDENT's new JE 76/TL14b to be developed for the Earhart jet.
7. At the time, both parties were still subsidiaries of Engineering International SA and had cooperated in two earlier projects. At the first meeting at the higher management level in May 2010 Ms Fang, the Development Manager responsible for the engine project on RESPONDENT's side, and Ms Filmas agreed on the basic principles for the cooperation of both parties. Ms Fang made clear that RESPONDENT had to agree already at that stage upon a price which could be used as the basis for a price offer to Earhart. Earhart SP, which was also negotiating with a second possible supplier, wanted to sign a contract for the engine in September 2010 with a fixed price. Ms Filmas insisted that due to the uncertain costs for the development of a new fan blade CLAIMANT could not submit to a fixed price yet. Finally, an agreement was reached to agree on a price range with different costs and profit elements and a maximum price which could serve as the basis for RESPONDENT's internal calculation of its offer to Earhart.
8. As a comparable model had already been used in their two earlier co-operations the Parties merely copied the price mechanism of the earlier contracts replacing the older prices and profit margins with the ones agreed under the contract. At the time of their previous co-operations, there had been no need for the parties to regulate explicitly the exchange rate as they belonged to the same group of companies. In the end, however, both times the exchange rate at the time of contracting had been used for the conversion of the cost elements.
9. It was clear for RESPONDENT that this should be the basis for the present cooperation as well. That was even more so, as in a meeting in November 2009 at the premises of Engineering International, which had also been attended by CLAIMANT'S CEO, it had been discussed that SantosD should be "de-risked" to make it more attractive to potential buyers (Respondent's **Exhibit R 1**). In this context the reduction of currency risk in existing contracts via the agreement of fix exchange rates had been explicitly mentioned. At the time there had been no ongoing contractual relation between the Parties, but it was obvious for RESPONDENT that the same should apply for newly concluded contracts. The mere fact, that Engineering International had decided in February 2010 to also sell CLAIMANT does not change anything in this regard.

10. Unfortunately, at the time when the Development and Sales Agreement was signed the Parties forgot to add an express provision as to the exchange rate to the model used. Given that the parties no longer belonged to the same group of companies and to avoid any future discussions on the applicable exchange rate RESPONDENT therefore insisted on having the exchange rate governing the whole contract explicitly regulated in the addendum to the contract. CLAIMANT did not raise any objections to such a provision (Respondent's **Exhibit R 2**).

## Legal Evaluation

11. CLAIMANT's claim has to be rejected as not admissible as the arbitral proceedings were initiated too late.
12. Pursuant to Section 21 of the Contract the arbitral proceedings had to be initiated "within 60 days after the failure of the negotiation". The Request for Arbitration submitted by CLAIMANT on 31 May 2016 did not comply with the requirements of Article 4.1 and 4.2 CAM-CCBC Rules. Neither had Claimant paid the Registration Fee in full nor had it submitted a power of attorney for the arbitration. Consequently, the arbitration proceedings were only commenced on 7 June 2016 after the signed power of attorney was provided and the fee had been paid in full.
13. At that date the time limit for initiating the arbitral proceedings had already expired. CLAIMANT declared the negotiations to be failed on 1 April 2016 (Respondent's **Exhibit R 3**). Consequently, the arbitration proceedings had to be initiated at the 31 May 2016 at the latest. That is apparently also the position of CLAIMANT as is evidenced by its letter of 31 May 2016 to the CAM-CCBC. CLAIMANT's efforts to commence arbitral proceedings on that day were, however, not successful as Mr Fasttrack even lacked any proper authority to do so.
14. RESPONDENT is also not prevented from relying on CLAIMANT's obvious failure to properly initiate the arbitration proceedings. What is required for the commencement of arbitration proceedings is clearly set out in Articles 4.1 and 4.2 and RESPONDENT has not prevented CLAIMANT from complying with these requirements.

## Merits

15. CLAIMANT has no claims for payment against RESPONDENT under the contract, as Respondent has fully performed its payment obligations.
16. Under the Development and Sales Agreement and as stated in the first invoice sent with the blades RESPONDENT had to pay US\$ 20,438,560 for the fan blades to CLAIMANT's bank account which RESPONDENT did.
17. Contrary to CLAIMANT's allegations RESPONDENT did not try to "take advantage" of an obvious mistake in an invoice but paid the price it was required to pay under the Development and Sales Agreement. The price for the fan blades is determined on the basis of Section 4 of the Development and Sales Agreement. CLAIMANT's production cost amount to EQD 19,586. Converted according to the fixed exchange rate governing the whole Agreement, which is specified - or agreed between the Parties - in the Addendum to the Agreement and adding the agreed upon profit that amount to costs of US\$ 9,744.28 per blade. The fixed rate explicitly stipulated in the Addendum was to be applied for the whole Development and Sales Agreement and not only the Addendum as alleged by CLAIMANT (Respondent's **Exhibits R 4 and R 5**).



18. The 0.5% levy by the Central Bank of Equatoria for the examination of its Financial Investigation Unit under Section 12 Regulation ML/2010C has to be borne by CLAIMANT. It is not part of the ordinary bank charges for payments but based on a very specific public law regulation in Equatoria where CLAIMANT has its place of business. No comparable rule exists in Mediterraneo or any other country known to RESPONDENT. Had RESPONDENT been aware of the levy it would either have taken the levy into account in the price calculations or would have insisted on the inclusion of an explicit provision into the contract that CLAIMANT should bear this extraordinary charge arising from circumstances which are much more associated with CLAIMANT than with RESPONDENT.
19. CLAIMANT by contrast knew of the levy or at least ought to have known about it. Enquiries with other engine producers made by RESPONDENT after the initiation of this arbitration have revealed that the levy has been charged by the Central Bank already before at least on two occasions where payments had been made to CLAIMANT. In the first case, involving a payment of May 2010 by JetPropulse from Ruritania, CLAIMANT actually paid the levy and not the buyer JetPropulse. In general, the present situation is comparable to the much more frequent problem in relation to the seller's obligation to deliver goods that public law regulations at the buyer's place potentially affecting the conformity of the goods. It is now largely accepted that unless the parties have agreed differently the public law regulations at the seller's place of business are relevant for the conformity of delivery under Article 35 (2) CISG. The seller is not expected to know all public law regulations at the buyer's place of business unless the buyer actually informs it about such regulations. The same consideration must be applied to the obligation to pay the price. Thus CLAIMANT was either under a duty to inform RESPONDENT about the extraordinary levy known to CLAIMANT or to bear the costs for it.

In light of this RESPONDENT requests the Arbitral Tribunal

1. to dismiss the claims as belated;
2. to reject all claims for payment raised by CLAIMANT;
3. to order CLAIMANT to pay RESPONDENT's costs incurred in this arbitration.



Joseph Langweiler

### **Annexes**

Respondent's Exhibit R 1 -4

Résumé of Prof. Lena Chowdry (not reproduced)



Tue 10/11/09 9:23 a.m.

**Yan Malmesbury**

To [contract.management@SantosD.me](mailto:contract.management@SantosD.me)

From info@SantosD.me

Re De-risking contracts

Dear Colleagues,

Following the information of last week that our parent company Engineering International has decided to concentrate on its core business and intends to sell us and Drake Ltd, producing ship engines, a first meeting discussing details of the plan has taken place yesterday at the premises of Engineering International. The meeting was attended by myself, the CEO of Drake Ltd as well as the CEO's of all other subsidiaries of Engineering International with whom we had joint projects in the past, including the new CEO of Wright Ltd, Mr. Sacadura Coutinho.

One of the points discussed was the need to "de-risk" SantosD and Drake Ltd to make them more attractive for potential buyers. In particular, all currency risks contained in our contracts should be identified and be reduced. It was agreed that whenever these risks are contained in contracts with other subsidiaries of Engineering International, the relevant contract managers of our counterparts should do their best in helping us to reduce our risks, by either agreeing on fixed exchange rates, where the contracts provide for a floating rates, or by finding other hedging strategies which reduces our exposure to currency risks.

As Engineering International has a great interest in finding a buyer for SantosD we should make use of our strong bargaining position and should reduce the risks as much as possible.

Could I therefore ask you to identify all contracts with currency risks and report them to me no later than next Friday.

Sincerely,

Yan Malmesbury

SantosD KG  
77 Avenida O Rei  
Cafucopa  
Mediterraneo  
T (0) 146-9128  
Fax (0) 146-5634



Fr 22/10/10 10:23 a.m.

Paul Romario

To [secretariat@wright.eq](mailto:secretariat@wright.eq)

From info@SantosD.me

Re Clamps

Dear Ms Beinhorn,

As already discussed we think the easiest way to regulate the purchase of the clamps is to sign an addendum to our Development and Sales Agreement and not to enter into a separate contract for the clamps.

I would suggest the following terms to be added by hand to the agreement.

**Addendum**

*The Buyer may request the Seller to produce and deliver 2,000 clamps to attach the fan blades to the fan shaft. The Price for the clamps shall be on a cost coverage base and be paid in US\$.*

*Other terms as per main Agreement.*

*The exchange rate for the agreement is fixed to US\$ 1= EQD 2.01.*

If these terms are acceptable to you, Mr Lindbergh could sign the addendum at his next visit to Wright Ltd on 26 October.

Sincerely,

Paul Romario

SantosD KG  
77 Avenida O Rei  
Cafucopa  
Mediterraneo  
T (0) 146-9128  
Fax (0) 146-5634

Fri 01/04/16 12:46 p.m.



Amelia Beinhorn

To [info@SantosD.me](mailto:info@SantosD.me)

From [secretariat@wright.eq](mailto:secretariat@wright.eq)

Re Payment TRF 192-I

Dear Mr Lindbergh,

I very much regret that our last offer was not acceptable to you and the outcome of yesterday's meeting shows that it is presently not possible to find an amicable solution.

Consequently, we have instructed our lawyer to take the necessary steps to initiate arbitration proceedings against you. We had hoped to avoid such proceedings but your insistence of not making any further payments towards the agreed upon purchase price leaves us no other options.

Should you reconsider your view I am always at your disposal and we remain open for any meaningful negotiations.

Please take into account, however, that from now on the costs incurred for our lawyer must be part of any settlement reached.

Sincerely,

Amelia Beinhorn

Wright Limited  
 232 Garrincha Street  
 Oceanside, Equatoriana  
 T (0) 214-8803  
 F (0) 214-8809

Mo 24/10/10 11:14 a.m.



Amelia Beinhorn

To [info@SantosD.me](mailto:info@SantosD.me)

From [secretariat@wright.eq](mailto:secretariat@wright.eq)

Re Clamps

Dear Mr Romario,

Thank you for your email. I think your suggestion to link the agreement in regard to the clamps to the contract in regard to the TRF 192-I fan blades is a sensible one. I also agree to the fixed exchange rate.

The addendum will be ready for Mr Lindbergh to sign when he visits Wright Ltd.

Sincerely,

Amelia Beinhorn

Wright Limited  
 232 Garrincha Street  
 Oceanside, Equatoriana  
 T (0) 214-8803  
 F (0) 214-8809

## Witness Statement

Paul Romario

I am the present CEO of SantosD KG and in 2010 was in charge of negotiating the Development and Sales Agreement between the Parties, though some of the negotiations were done by the members of the development team for the engine JE 76/TL14b, in particular Ms Celia Fang. For us it was important that we could, already at that time, make a largely binding price offer for the engine JE 76/TL14b to Earhart SP. At the time Earhart was negotiating with a second possible supplier and put great emphasis on a binding quote. To give such a quote was only possible if our suppliers, including Wright, were already in agreement on a maximum price even if the components still had to be developed. On the basis of the maximum price we then calculated what the engine would cost in a worst case scenario and made a price offer which was slightly below that price. Taking into account that it would be very unlikely that the worst case scenario would materialize we hoped to make again with the engine. For us it was very important to be the provider for Earhart, which we could then use as a reference and marketing tool for the new generation of our engine. Thus, we were willing to take the risk that we would incur a small loss in the very unlikely event that for all components the worst case materializes.

After the conclusion of the main agreement it became clear that we would also need clamps from CLAIMANT. Furthermore, I had just realized that the price clause which we had used already for our two previous co-operations (TRF 163-I; TRF 150-II) did not include an express statement as to the applicable exchange rates. Under the old contracts the lack of an explicitly stated exchange rate had not been a major issue because CLAIMANT and RESPONDENT belonged to the same group of companies. Furthermore, the exchange rate between the US\$ and EQD had hardly changed over the last three years. After the sale of both Parties to different owners the exchange rate could, however, become a major issue as the present disputes shows. The exchange rate has a strong influence on who would bear the currency risk and lack of clarity always entails the risk of opportunistic behavior, of a party subsequently contesting an implicit understanding which has not been made explicit.

Therefore, I insisted on the last sentence of the addendum which in my view could not be clearer. For me it was clear that the exchange rate would apply also to the fan blades. I cannot say whether CLAIMANT's negotiators had the same view. If not, they should have said so and not let us believe that the exchange rate applied to the complete contract.

In principle, the now express solution merely spells out what had already been the understanding of the parties when they entered into the Development and Sales Agreement but merely did not mention explicitly. It reflects the practice between the parties during their two previous co-operations for the TRF 163-I and the TRF 150-II. In calculating the price for the fan blades developed under these two contracts the Parties always applied the exchange rate at the time the contract was concluded.

Mediterraneo, 20 June 2016

*[Signature]*

Paul Romario

São Paulo, 27 June 2016.

Ms Martha Maracanã  
41 Azteca Lane  
Oceanside, Equatoriana

**Ref.: Appointment to act as Arbitrator**

Arbitration Proceeding Nr. 200/2016/SEC7

Claimant: Wright Ltd

Respondent: SantosD KG

Dear Ms Martha Maracanã,

The Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada ("**CAM-CCBC**") is honored to inform that you have been appointed by Claimant, Wright Ltd, to act as arbitrator in the arbitration proceeding Nr. 200/2016/SEC7.

Respondent, on the other hand, appointed Prof. Lena Chowdry.

Pursuant to Article 4.6<sup>1</sup> of the Rules, we kindly request you to fill out CAM-CCBC's Conflict of Interest and Availability Questionnaire ("**Questionnaire**"), either by e-mail or the attached printout.

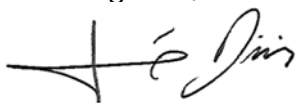
Considering the restrictions applicable to acting as arbitrator set forth in the Rules, as well as the provisions contained in the Code of Ethics, we hereby attach copies of the following documents:

- (i) Request for Arbitration, submitted on 31 May 2016;
- (ii) Claimant's amendment to the Request for Arbitration, submitted on 07 June 2016;
- (iii) Answer to the Request for Arbitration, submitted on 24 June 2016;
- (iv) CAM-CCBC Rules and CAM-CCBC Table of Expenses.

The amount in dispute, as stated by the parties, is US\$ 2,387,432.80 (two-million, three-hundred and eighty-seven, four-hundred and thirty-two United States dollars and eighty cents).

We remain at your disposal for further inquiries.

Kind regards,



Case Manager

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<sup>1</sup> CAM-CCBC Rules, Article 4.6. The Secretariat of the CAM-CCBC will inform the Parties and the arbitrators of the appointments made. At the same time, the arbitrators who are appointed will be asked to fill out CAM-CCBC's Conflict of Interest and Availability Questionnaire, referred to simply as the Questionnaire, within ten (10) days.

São Paulo, 05 July 2016.

**Wright Ltd**

Attn. Horace Fasttrack  
14 Capital Boulevard  
Oceanside, Equatoriana

**SantosD KG**

Attn. Joseph Langweiler  
75 Court Street  
Capital City, Mediterraneo

**Ref.: Answer to the Conflict of Interest and Availability Questionnaire**

Arbitration Proceeding Nr. 200/2016/SEC7

Claimant: Wright Ltd

Respondent: SantosD KG

Dear Sirs,

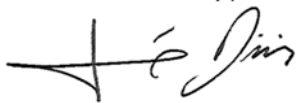
In accordance with Article 4.7<sup>1</sup> of the Rules, please find attached the answers to the Conflict of Interest and Availability Questionnaire presented by the arbitrators, Ms Martha Maracanã and Prof. Lena Chowdry.

According to Article 4.7, the Parties have 10 (ten) days to submit comments.

Pursuant to Article 4.8<sup>2</sup> of the Rules, if the parties raise any objections related to the independence or impartiality of the arbitrator, the arbitrator shall have ten (10) days to submit comments, after which the parties shall have ten (10) days to present a challenge.

Please do not hesitate to contact us for further inquiries.

Yours Sincerely,



Case Manager

<sup>1</sup> CAM-CCBC Arbitration Rules, Article 4.7. The answers to the Questionnaires and any material facts will be sent to the Parties, after which they will have ten (10) days to submit comments.

<sup>2</sup> CAM-CCBC Arbitration Rules, Article 4.8. If the parties raise an objection related to the independence, impartiality or any material issue in regard to an arbitrator, the arbitrator involved will have ten (10) days to submit comments, after which the parties will have ten (10) days to present any challenge, which will be processed under Article 5.4.



**Arbitration Proceeding Nr. 200/2016/SEC7**

**Claimant:** Wright Ltd  
**Respondent:** SantosD KG

**Order of the President of the CAM-CCBC**

1. On 27 June 2016, the arbitrators appointed by the parties were asked to fill out CAM-CCBC's Conflict of Interest and Availability Questionnaire.
2. On 05 July 2016, the Secretariat of the CAM-CCBC submitted the answers provided by the arbitrators to the parties.
3. On 08 July 2016, Claimant and Respondent informed they had no objections to the appointed arbitrators.
4. Pursuant to the arbitration clause, contained in Article 21 of the Development and Sales Agreement, "the President of the Arbitral Tribunal shall be appointed by the President of CAM-CCBC".
5. In light of that, the President hereby nominates Mr. Ronald O Zagallo to act as President of the Arbitral Tribunal.
6. In accordance with Article 4.6<sup>1</sup>, the Secretariat shall inform the parties and the arbitrators of the appointment made and request the president of the Arbitral Tribunal to fill out the Questionnaire.

São Paulo, 11 July 2016.



Carlos Suplicy de Figueiredo Forbes  
President of the CAM-CCBC

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<sup>1</sup> CAM-CCBC Rules, Article 4.6. The Secretariat of the CAM-CCBC will inform the Parties and the arbitrators of the appointments made. At the same time, the arbitrators who are appointed will be asked to fill out CAM-CCBC's Conflict of Interest and Availability Questionnaire, referred to simply as the Questionnaire, within ten (10) days. 4.6.1. The Questionnaire will be prepared by the CAM-CCBC's Executive Committee, together with the Advisory Committee. Its purpose will be to gather information about the arbitrators' impartiality and independence, as well as time availability and other information related to their duty of disclosure.

Arbitration Proceeding Nr. 200/2016/SEC7

**Conflict of Interest and Availability Questionnaire  
Arbitration and Mediation Center  
Brazil-Canada Chamber of Commerce (CAM-CCBC)**

The Questionnaire was drafted by CAM-CCBC's Executive Committee and the Advisory Committee with the purpose of guiding the arbitrators in fulfilling their obligation to reveal information about their impartiality and independence, pursuant to the Rules and the Code of Ethics.

**Parties**

**Claimant:** Wright Ltd  
**Attorney:** Horace Fasttrack

**Respondent:** SantosD KG  
**Attorney:** Joseph Langweiler

**1. Appointed Arbitrator**

**name:** Ronald O Zagallo

**qualification:** Lawyer

**address:** 17b Horizont Road, Vindobona, Danubia

**2. Did you, under any circumstance or capacity, act as council to any of the parties in the proceeding for which you are being appointed to act as arbitrator?**

No (X) Yes ( )  
Observations:

**3. Have you ever been employed by, or did you act as consultant, judicial or extrajudicial expert for any of the parties in this proceeding?**

No (X) Yes ( )

**4.** Where do you work or have worked in the past five (5) years?  
In my own law firm in Danubia

**5.** Do you know any of the parties in this proceeding?

No (X)

Yes ( ) Please specify:

**6.** Have you previously acted as arbitrator in a proceeding in which one of the parties was claimant or respondent in the past five (5) years?

No (X)

Yes ( ) Please specify:

**7.** Considering that, pursuant to provision 2 of the Code of Ethics, the arbitrator may only accept the appointment if able to dedicate the time and effort required to meet the parties' expectations, assuring that the proceeding runs in a cost and time effective manner, are you available to act in this arbitration proceeding, abiding by the deadlines set forth in the Rules?

No ( )

Yes (X)

**8.** Have you issued an opinion on the matter discussed in this proceeding by request of one of the parties?

No (X)

Yes ( )

Observations:

**9.** Do you currently have or have you ever had any business relationship with the parties?

No (X)

Yes ( )

Observations:

**10.** Does any member of your family, a relative up to the second degree, or a member of your company currently have or has ever had any business relationship with the parties?

No (X)

Yes ( )

Observations:

**11.** Have you ever acted as arbitrator or as a judicial expert?

No ( )

Yes (X) Please specify the subject matters: Sales and Engineering Contracts

**12.** Considering that, pursuant to provision 4 of the Code of Ethics, the arbitrator is required to reveal any fact that may raise doubts concerning their independence or impartiality, do you wish to present additional comments?

No (X)

Yes ( )

Observations:

\* \* \*

The answers were provided based on the parties' names and the information provided by the parties.

Vindobona, 14 July 2016.



Ronald O Zagallo

São Paulo, 21 July 2016.

**Mr. Ronald O Zagallo**

17b Horizont Road  
Vindobona, Danubia

**Ms. Martha Maracanã**

41 Azteka Lane  
Oceanside, Equatoriana

**Prof. Lena Chowdry**

25 Rue nascimento 23 OK 40  
Rasunda, Mediterraneo

**Re: Statement of Independence and copy of the case file**

Arbitration Proceeding Nr. 200/2016/SEC7

Claimant: Wright Ltd

Respondent: SantosD KG

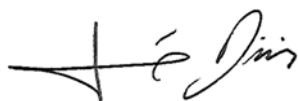
Dear Mr. Ronald O Zagallo, Ms. Martha Maracanã and Prof. Lena Chowdry,

Considering that the parties did not raise any challenges to the arbitrators based on the answers presented to the CAM-CCBC Conflict of Interest and Availability Questionnaire, please find attached copies of the case file.

Furthermore, as provided for in Article 4.14<sup>1</sup> of the Rules, we invite you to sign the Statement of Independence in ten (10) days. The signing of the Statement of Independence indicates, for all purposes, your formal acceptance of the arbitrators' duties.

Please do not hesitate to contact us with any inquiries.

Best regards,



Case Manager

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<sup>1</sup> CAM-CCBC Rules, Article 4.14. The Secretariat will notify the arbitrators to sign the Statement of Independence within ten (10) days, which will demonstrate formal acceptance of the arbitrators' duties, for all purposes, and the parties will be notified for the preparation of the Terms of Reference.

### **Independence Statement**

I, the undersigned, appointed by the President of the CAM-CCBC to act as president of the Arbitral Tribunal that will be constituted to decide the dispute between Wright Ltd and SantosD KG in the Arbitration Proceeding Nr. 200/2016/SEC7,

Hereby declare,

That I have no relationship with the parties or the dispute that may give rise to reasonable doubt as to my independence or impartiality, according to Article 5.2 of the Rules, for all legal purposes and, especially, for those related to this proceeding, therefore being fully independent and impartial to serve as arbitrator.

Vindobona, 26 July 2016.



Ronald O Zagallo  
President of the Arbitral Tribunal

**Arbitration Proceeding Nr. 200/2016/SEC7**

**Claimant:** Wright Ltd  
**Respondent:** SantosD KG

**Order of the President of the CAM-CCBC**

1. On 31 May 2016, Wright Ltd ("Claimant") presented a request for arbitration at CAM-CCBC against SantosD KG ("Respondent"). On 07 June 2016, Claimant presented an amendment to the Request for Arbitration.
2. On 24 June 2016, Respondent presented its Answer to the Request for Arbitration, in accordance with Article 4.3<sup>1</sup> of the Rules.
3. For the constitution of the Arbitral Tribunal, Claimant appointed Ms. Martha Maracanã and Respondent appointed Prof. Lena Chowdry. As provided for in the arbitration clause, the President of the CAM-CCBC appointed Mr. Ronald O Zagallo to act as president on 11 July 2016.
4. All arbitrators answered the CAM-CCBC's Conflict of Interest and Availability Questionnaire, indicating they are apt to constitute the Arbitral Tribunal.
5. None of the parties raised any objections to the answers and comments provided by the arbitrators in the abovementioned Questionnaire in response to the notification of Article 4.7<sup>2</sup> of the Rules.
6. The arbitrators signed the Statements of Independence, attesting their formal acceptance of the task.
7. Therefore, I confirm the constitution of the Arbitral Tribunal. Accordingly, notify the parties and the Arbitral Tribunal to sign the Terms of Reference within 30 (thirty) days from the receipt of this Order. The Secretariat shall observe compliance of this term.

São Paulo, 26 July 2016.



Carlos Suplicy de Figueiredo Forbes  
President of the CAM-CCBC

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<sup>1</sup> CAM-CCBC Rules, Article 4.3. The Secretariat of the CAM-CCBC will send a copy of the notice and respective documents that support it to the other party, requesting that, within fifteen (15) days, it describe in brief any matter that may be the subject of its claim and the respective amount, as well as comments regarding the seat of arbitration, language, law or rules of law applicable to the arbitration under the contract.

<sup>2</sup> CAM-CCBC Rules, Article 4.7. The answers to the Questionnaires and any material facts will be sent to the Parties, after which they will have ten (10) days to submit comments.

## Terms of Reference

Arbitration Proceeding Nr. 200/2016/SEC7

In compliance with Articles 4.17 and 4.18 of the Rules of the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada ("**CAM-CCBC**"), the Parties, the Arbitrators and the CAM-CCBC Representative execute these Terms of Reference (hereinafter "**Terms of Reference**") related to the proceeding specified above ("**Arbitration Proceeding**" or "**Arbitration**"), which shall be conducted in accordance with the CAM-CCBC Arbitration Rules, effective from 01 January 2012 ("**Rules**"), and the provisions hereunder.

### I. NAME, DESCRIPTION AND ADDRESS OF THE PARTIES

CLAIMANT:

- 1.1. **Wright Ltd**, 232 Garrincha Street, Oceanside, Equatoriana, hereinafter referred to as "**Claimant**";

RESPONDENT:

- 1.2. **SantosD KG**, 77 Avenida O Rei, Cafucopa, Mediterraneo, hereinafter referred to as "**Respondent**";
- 1.3. Claimant and Respondent shall hereinafter be jointly referred to as "**Parties**".

### II. ATTORNEYS AND REPRESENTATIVES OF THE PARTIES

*[omitted]*

### III. ARBITRATION CLAUSE

*[omitted]*

### IV. ARBITRAL TRIBUNAL: NAME, ADDRESS AND DESCRIPTION

- 4.1. The Arbitral Tribunal is composed of the following Arbitrators:

- 4.1.1. **Martha Maracanã**, Equatorian, Lawyer, ID nr.EQ523913956, with offices at 41 Azteka Lane, Oceanside, Equatoriana, e-mail: m.maracana@ius.com, appointed by Claimant;
- 4.1.2. **Lena Chowdry**, Mediterranean, Academic, ID nr. M195819621970, with offices at 25 Rue Nascimento, 23 OK 40, Rasunda, Mediterraneo, e-mail: l.chowdry@knowledge.edu, appointed by Respondent;
- 4.1.3. **Ronald O Zagallo**, Danubian, lawyer, ID nr. D54667410, with offices at 17b Horizont Road, Vindobona, Danubia, e-mail: r.zagallo@victory.com, President of the Arbitral Tribunal, appointed by the President of the CAM-CCBC.



- 4.2. The Arbitrators have answered CAM-CCBC's Conflict of Interest and Availability Questionnaire, have signed the Independence Statement and were confirmed on 26 July 2016 by the President of the CAM-CCBC.
- 4.3. The Parties attest to having provided prior information of persons or companies related to the arbitration proceedings for purposes of disclosure. Moreover, the Parties have presented no objections to the appointed Arbitrators.
- 4.4. Therefore, the Terms of Reference ratifies for all legal purposes the constitution of the Arbitral Tribunal, composed of the abovementioned Arbitrators, which shall be entrusted with conducting the arbitration proceedings and deciding on the matters brought before it.

## **V. SUMMARY OF THE PARTIES' CLAIMS / COUNTERCLAIMS**

- 5.1. The Parties' requests and allegations as summarized below may further be detailed and substantiated in the Submissions to be presented by the Parties according to the calendar set forth in item IX of these Terms of Reference.
- 5.2. The signing of these Terms of Reference does not imply the acceptance or subscription by any of the Parties of the summary or the requests formulated by the other party, as set forth below.

CLAIMANT'S ALLEGATIONS AND REQUESTS: *[omitted]*

RESPONDENT'S ALLEGATIONS AND REQUESTS: *[omitted]*

## **VI. ARBITRATION LANGUAGE AND VENUE**

- 6.1. The Arbitration shall be conducted in English and all manifestations and requests of the Parties, procedural instructions and possible manifestations of the Arbitrators, including the Arbitration Award, shall be written in the mentioned language.
- 6.2. The venue of the Arbitration is the city of Vindobona, Danubia. However, diligences in any other locality may be undertaken as authorized or ordered by the Arbitral Tribunal.

## **VII. APPLICABLE LAW**

- 7.1. *[omitted]*

## **VIII. AMOUNT IN DISPUTE**

- 8.1. Claimant, in its Request for Arbitration, set the value of US\$ 2,387,432.80 (two million, three hundred and eighty-seven, four hundred and thirty-two United States dollars and eighty cents) as the amount in dispute.
- 8.2. Respondent, in its Answer to the Request for Arbitration, did not contest the amount in dispute estimated by Claimant.

- 8.3. Pursuant to the Table of Expenses, the arbitration fees, namely administration fees and arbitrators' fees, were calculated based on the amount of US\$ 2,387,432.80 (two million, three-hundred and eighty-seven thousand, four hundred and thirty-two United States dollars and eighty cents). Nonetheless, at any time, the CAM-CCBC may reassess the amount in dispute based on the Parties' claims and the documents presented.

#### **IX. PROVISIONAL CALENDAR**

*[omitted]*

#### **X. DOCUMENTARY EVIDENCE**

- 10.1. Copies of documents shall be valid evidence as if they were the original, unless deemed unacceptable by the Arbitral Tribunal.

*[omitted]*

#### **XI. OTHER PROCEDURAL RULES**

*[omitted]*

#### **XII. COSTS AND EXPENSES**

*[omitted]*

- 12.1. **Default in payment:** Any default of the Parties with respect to requested payments shall give rise to the provisions set forth in Articles 12.10 to 12.12 of the Rules.
- 12.2. *[omitted]*
- 12.3. **Costs and fees:** The Arbitral Award shall establish the responsibility related to the payment of administrative costs and fees, Arbitrators' fees and Tribunal-appointed experts' fees, attorneys' fees, as well as the reasonable expenses incurred by the parties in their defense process. The Arbitral Tribunal shall also fix the amount or the proportion of refund of one party to the other. The Arbitrators will consider the behavior of the parties in order to reduce the amount of cost refund.
- 12.4. During the course of the arbitration proceedings, each party shall bear the fees of its respective attorneys and possibly of technical assistants, of its free choice.
- 12.5. The Parties, the Arbitrators and the Representatives of CAM-CCBC execute these Terms of Reference, so as to produce all legal effects, in the presence of the two witnesses identified below.

Danubia, 22 August 2016.

**PARTIES:**



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**WRIGHT LTD**

*Herein represented by: Horace Fasttrack*



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**SANTOSD KG**

*Herein represented by: Joseph Langweiler*

**ARBITRATORS:**



Martha Maracanã



Lena Chowdry




Ronald O Zagallo

**CAM-CCBC:**



Carlos Suplicy de Figueiredo Forbes  
President of the CAM-CCBC



Case Manager – CAM-CCBC

**WITNESSES:**



Name: Franz Zico



Name: Claudia Carnaval

*Joseph Langweiler*  
Advocate at the Court  
75 Court Street  
Capital City  
Mediterraneo  
Tel. (0) 146-9845 Telefax (0) 146-9850  
Langweiler@lawyer.me

6 September 2016

By courier  
Mr Ronald O Zagallo  
President of the Arbitral Tribunal  
In the case CAM-CCBC  
17 Horizont Road, Vindobona, Danubia

CC: Members of the Arbitral Tribunal  
The President of the Center for Arbitration and Mediation of the Chamber of Commerce  
Brazil-Canada (CAM-CCBC)  
Rua do Rocio, 220  
12º andar - cj.121  
São Paulo, SP 04552-000  
Brazil

*Wright v. SantosD*

**Request for Security for Cost**

Pursuant to Article 8 CAM-CCBC Rules

Wright Ltd  
232 Garrincha Street  
Oceanside  
Equatoriana

- CLAIMANT -

Represented in this arbitration by Horace Fasttrack

SantosD KG  
77 Avenida O Rei  
Cafucopa  
Mediterraneo

- RESPONDENT -

Represented in this arbitration by Joseph Langweiler

## Request for Security for Costs

- 1 RESPONDENT requests the Tribunal to order Claimant to provide security for the costs RESPONDENT is likely to incur in this arbitration. The amount ordered should secure the advance on costs which RESPONDENT has to pay to the Tribunal as well as RESPONDENT's legal costs for the services of Mr Langweiler and expenses likely to be incurred for the oral hearing for witnesses and experts. Upon a first estimate and taking into account the amount in dispute the legal cost will amount to a minimum of US\$ 200,000 but will probably be higher.
- 2 As stated in greater details in the Answer to the Request for Arbitration, CLAIMANT's claims lack any factual and legal basis. They will therefore be rejected by the Tribunal which will have to render an award on costs pursuant to Article 10.4.1. CAM-CCBC Rules in favor of RESPONDENT. It is, however, very likely that CLAIMANT will not perform this award on costs in favor of RESPONDENT. In January 2016 CLAIMANT has been ordered by another tribunal acting under the CAM-CCBC Rules to pay to one of its suppliers US\$ 2,500,000. CLAIMANT has neither challenged the award nor has it complied with it. Upon the request of this supplier pursuant to Article 11.2 CAM-CCBC Rules the CAM-CCBC has disclosed that fact to the Chambers of Commerce in Equatoria and Mediterraneo on 1 September 2016 [Respondent's **Exhibit R 6**]. CLAIMANT's behavior evidences first that it is not intending to comply with award rendered against it.
- 3 Second, the non-compliance with the payment order raises serious doubts as to CLAIMANT's financial situation, as is evidenced by the article in the Carioca Business News. The usually well informed author furthermore reports of CLAIMANT's apparently unsuccessful efforts to obtain outside funding for this arbitration.
- 4 These efforts were not known to RESPONDENT which otherwise would have requested the interim order for security for costs already in its Answer to the Request for Arbitration. Such concealment of its true financial situation seems to be a business practice of CLAIMANT. At the time CLAIMANT and RESPONDENT were negotiating their original contract CLAIMANT created the impression that an award for a major compensation of at least a US\$ 100 million was imminent in its arbitration proceedings with the government of Xanadu. Notwithstanding that the final award was rendered three weeks before the contract with RESPONDENT was signed, CLAIMANT never informed RESPONDENT about the outcome of the arbitration though the award was well below what CLAIMANT had expected. The UNCITRAL Rules on Transparency require that awards should be made available to the general public. Even if the Rules on Transparency might not have been directly applicable to the arbitration with Xanadu or this arbitration they evidence a general trend to transparency in arbitration. Thus, RESPONDENT which was entering into a long term relationship with CLAIMANT could expect to be informed about the outcome of the arbitration given its financial importance.
- 5 The requested order for security for costs is necessary to efficiently protect the rights of RESPONDENT.



Joseph Langweiler

## Turbulent times: Equatorian Producer of jet engine blades in bad weather?

On a press conference of 2 September, the Head of the Chamber of Commerce in Oceanside, Equatoriana confirmed that the Chamber had received on 1 September 2016 a notice from CAM-CCBC, one of the leading arbitration institutions in South America that the Equatoriana based fan producer Wright Ltd had not complied with an arbitral award ordering it to pay US \$ 2,500,000 to one of its suppliers.

The message refuels concerns about the financial situation of Wright Ltd. In January 2008 Wright had to close down its local subsidiary in Xanadu due to an alleged non-compliance with local regulations. The trustee appointed by the local authorities had subsequently sold the production facilities to a group of local investors. As a consequence, Wright had brought an investment claim against the government of Xanadu alleging that governmental officials had conspired with local competitors to take possession of the very profitable subsidiary and its production facilities. The arbitration had been funded by Finance You, a well known

third party funder of investment claims. As was only disclosed in the beginning of 2016 the arbitration had resulted in an award on 7 June 2010 in favor of Wright ordering the government of Xanadu to pay 12 million in damages for the de facto expropriation of Wright Ltd. The amount was, however, only a fraction of the US\$ 203 million allegedly claimed by Wright. At the time the spokesman of Wright did not want to comment on the outcome of that arbitration which had resulted in a serious drop in the values of Wright's shares.

Carioca Business News has been informed by persons close to Wright that there was another arbitration initiated against a foreign customer for which Wright had approached several third party funders. Apparently, none of them had taken up the arbitration. Questions by Carioca Business News of why that was the case to the funders and Wright remained unanswered.



### Carioca Business News

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Corporate Restructuring

5 September 2016

From Mr Ronald O Zagallo  
President of the Arbitral Tribunal  
In the case CAM-CCBC  
17 Horizont Road, Vindobona, Danubia

To: Horace Fasttrack  
14 Capital Boulevard  
Oceanside, Equatoriana

Joseph Langweiler  
75 Court Street  
Capital City, Mediterraneo

Vindobona, 8 September 2016

*CAM-CCBC*  
*Wright . /. SantosD*

Dear Colleagues,

Following RESPONDENT's request for security for costs of 6 September 2016 and the TelCo of this morning the Arbitral Tribunal makes the following orders:

- 1) CLAIMANT is given until 16 September 2016 to reply to RESPONDENT's request for security for costs.
- 2) A further TelCo to discuss how to deal with the request and possible amendment to the provisional calendar agreed in the Terms of Reference will be held on 6 October 2016

For the Arbitral Tribunal  
Yours sincerely,



Ronald O Zagallo  
President of the Arbitral Tribunal

*Horace Fasttrack*  
Advocate at the Court  
14 Capital Boulevard  
Oceanside  
Equatoriana  
Tel. (0) 214 77 32 Telefax (0) 214 77 33  
fasttrack@host.eq

16 September 2016

By courier  
Mr Ronald O Zagallo  
President of the Arbitral Tribunal  
In the case CAM-CCBC  
17 Horizont Road, Vindobona, Danubia

CC: Members of the Arbitral Tribunal  
The President of the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-  
Canada (CAM-CCBC)  
Rua do Rocio, 220  
12º andar - cj.121  
São Paulo, SP 04552-000  
Brazil

Dear Mr Forbes  
Dear Members of the Arbitral Tribunal

CLAIMANT objects to the RESPONDENT's request for security for costs.  
First, the request was made after the Parties and the Tribunal had already agreed on the Terms of Reference.  
Second, RESPONDENT has not submitted any facts which would justify the requested order let alone proven the need for such an order. In international arbitration security for costs is normally only granted in exceptional circumstances. No such circumstances have been proven by RESPONDENT. CLAIMANT's financial situation has not unexpectedly deteriorated since the time the parties entered into the contract (Claimant's Exhibit C 9).  
Also none of the other issues raised by RESPONDENT justifies the granting of interim relief. CLAIMANT has not complied with the award in the other CAM-CCBC proceedings as the award creditor owes an even larger amount to CLAIMANT's parent company as damages for the delivery of non-conforming goods. The claim is presently being litigated in the courts of Ruritania and any sum awarded will be set off against the award.  
Any lack of funding has been caused by RESPONDENT who had not paid the price due under the Development and Sales Agreement.

Sincerely yours,



Horace Fasttrack



**CLAIMANT's EXHIBIT C 9**  
Witness Statement Iliena Jaschin

I have a background in finance and am since 2009 the Chief Financial Officer of Wright Ltd. I deliver this witness statement after having read SantosD's Answer to the Request of Arbitration and its Application for Security for Cost. Both give a wrong impression of the facts which I would like to correct.

The financial situation of Wright Ltd has not changed substantially or unexpectedly between the conclusion of the Development and Sales Agreement in 2010 and the initiation of these arbitration proceedings. For companies of the size of Wright Ltd the development of a new fan blade is normally associated with a considerable financial effort largely depleting the freely available financial means. Once the sale of the newly developed fan blades starts liquid means are built up again. Consequently, our search for outside funding of this arbitration or insistence on quick payment is normal as we have just developed a new generation of fans. The situation was identical to that in the first month of 2010 where we had also a strained liquidity situation. The infusion of liquidity in the amount of EQD 1.5 million through our then parent company had been one of the conditions of the purchaser of Wright Ltd. It was, however, reflected for the first time in the balance sheet for the year 2010 published in February 2011.

Equally, our claim against the Government of Xanadu was reflected in our international balance sheet for 2009, published in February 2010, with US\$ 15 million which we considered to be very conservative at the time. It may well be that our CEO or other persons of the negotiation team had given different expectation to the general public or RESPONDENT, but the balance sheet always only included the claim with a value of US\$ 15 million which is not too different from the amount finally received.

Last but not least Mr Romario's description of the previous contracts is not completely correct. In fact, under both contracts the exchange rate at the time of contract conclusion was applied to convert the costs incurred into US\$. Both times that has, however, been the result of discussions at the time of payment. In one case it did not really matter, as the exchange rate at the time of contract conclusion was identical that of the time when the costs were incurred and that when payment was made. In the other case, concerns of liquidity management in the Engineering International SA group led to the decision in favor of applying the exchange rate at the time of contract conclusion.

Before signing the addendum Ms Beinhorn had asked me whether we could agree for the clamps to a fixed exchange rate. Given the limited size of the contract I agreed. In light of that request I am convinced that Ms Beinhorn would not have agreed on a fixed rate for the fan blades.

Equatoriana, 15 September 2016

*[Signature]* Iliena Jaschin

From Mr Ronald O Zagallo  
Chairman of the Arbitral Tribunal  
In the case CAM-CCBC  
17 Horizont Road, Vindobona, Danubia

To: Horace Fasttrack  
14 Capital Boulevard  
Oceanside, Equatoriana

Joseph Langweiler  
75 Court Street  
Capital City, Mediterraneo

Vindobona, 7 October 2016

*CAM-CCBC*  
*Wright . /. SantosD*

Dear Colleagues,

Please find enclosed Procedural Order No 1 in the above referenced arbitration proceedings.

Both Parties are requested to comply with the orders made and the Arbitral Tribunal reserves the right to draw negative inferences from any non-compliance with any part of Procedural Order No 1.

Yours sincerely,



Ronald O Zagallo  
President of the Arbitral Tribunal

Encl.: Procedural Order No 1

CAM-CCBC Arbitration  
**Procedural Order No 1**

7 October 2016

1. After its constitution and receipt of the file from CAM-CCBC the Arbitral Tribunal had agreed with the Parties on 22 August 2016 on Terms of Reference and signed them.
2. Shortly thereafter Respondent has submitted its request for security for cost on 6 September 2016 to which CLAIMANT has replied in its submission of 16 September 2016.
3. The Arbitral Tribunal takes note of the facts that
  - Neither Party challenges the jurisdiction of this Arbitral Tribunal in principle but RESPONDENT contests the admissibility of CLAIMANT's claims.
  - Both Parties agree that the cost statements in Equatorian EQ which have been submitted by CLAIMANT and which formed the basis for both Parties' cost submission are correct and only the applicable conversion rate is disputed between the Parties.
  - The Parties are in agreement that the information as to the exchange rates given for the various points in time is correct and that for calculation purposes rounded figures have been used.
  - RESPONDENT has agreed that the submissions on Security for Costs will be made jointly with the submission on the merits after CLAIMANT's chairman has provided a personal undertaking that CLAIMANT would provide security if so ordered by the Arbitral Tribunal.
  - Neither Party challenges the veracity of any of the documents submitted or the authority of the persons who have signed them.
4. Both Parties have agreed in a telephone conference of 6 October that a final decision for costs may be reserved for a separate award.
5. In the light of these agreements and considerations the Arbitral Tribunal hereby makes the following orders supplementing the Terms of Reference:

(1) In their next submissions and at the Oral Hearing in Vindobona (/Hong Kong) the Parties are required to address the following issues:

- a. Does the tribunal have the power and, if so, should it order CLAIMANT to provide security for RESPONDENT'S costs?
- b. Are CLAIMANT's claims admissible or have they been submitted out of time?
- c. Is CLAIMANT entitled to the additional payments from RESPONDENT in the amount of
  - i. US\$ 2,285,240.00 for the blades based on the present exchange rate (US\$ 1 = EQD 1.79)?
  - ii. US\$ 102,192.80 for the fees deducted by the Central Bank.

The Parties are free to decide in which order they address the various issues. **No further** questions going to the merits of the claims should be addressed.

(2) For their submissions the following Procedural Timetable applies:

- a. Claimant's Submission: not later than 8 December 2016

b. Respondent's Submission: no later than 26 January 2017

- (3) The submissions are to be made in accordance with the Rules of the Moot agreed upon at the telephone conference.
- (4) It is undisputed between the Parties that Equatoriana, Mediterraneo and Danubia are Contracting States of the CISG. The general contract law of all three states is a verbatim adoption of the UNIDROIT Principles on International Commercial Contracts. Danubia has adopted the UNCITRAL Model Law on International Commercial Arbitration with the 2006 amendments.
- (5) In the event Parties need further information, Requests for Clarification must be made not later than 27 October 2016 via their online party [team] account. No team is allowed to submit more than ten questions.
- (5 bis) For those institutions participating ONLY IN THE VIS EAST questions should be emailed to [clarifications@vismoot.org](mailto:clarifications@vismoot.org). Where an institution is participating in both Hong Kong and Vienna, the Hong Kong team should submit its questions together with those of the team participating in Vienna via the latter's account on the Vis website.

Clarifications must be categorized as follows:

- (1) Questions relating to the negotiation, drafting and conclusion of the Development and Sales Agreement.
  - (2) Questions relating to the negotiation, drafting and conclusion of the Addendum.
  - (3) Questions concerning the payment process.
  - (4) Questions concerning the invoicing process.
  - (5) Questions concerning the Parties' previous relationships.
  - (6) Questions concerning the filing of the Request for Arbitration.
  - (7) Questions concerning the financial situation of CLAIMANT at the various times relevant for the case.
  - (8) Questions relating to the applicable laws and rules to the case and in the countries concerned.
  - (9) Other questions.
6. Both Parties are invited to attend the Oral Hearing scheduled for 8 -13 April 2017 in Vindobona, Danubia (27<sup>th</sup> March – 2<sup>nd</sup> April 2017 in Hong Kong). The details concerning the timing and the venue will be provided in due course.

For the Arbitral Tribunal



President of the Tribunal

CAM-CCBC Arbitration Nr. 200/2016/SEC7  
*Wright ./. SantosD*  
**Procedural Order No 2**

**1. What was the exact date of sale of the two parties from Engineering International SA?**

Originally, Engineering International SA intended to sell only RESPONDENT. The decision was taken in October 2009 and then communicated internally and externally. The sale to SpeedRun took place on 3 August 2010.

Already in 2007, Engineering International SA had been negotiating about a sale of CLAIMANT with Skymover, the company which finally bought CLAIMANT in 2010. In the end, the Parties could not agree on a price due to the uncertainty created by the governmental actions in Xanadu. As a consequence Engineering International SA took the decision not to sell CLAIMANT at all. At the end of February 2010, Skymover surprisingly approached Engineering International SA with a new offer for CLAIMANT which was close to what Engineering International SA had been asking for in 2007/2008. As Engineering International SA was in need for liquidity it was willing to consider the offer and finally sold CLAIMANT to Skymover which then became Wright Holding PLC. It now holds 88% of the shares in CLAIMANT. The remaining 12% are held by institutional investors. The negotiations about the sale of CLAIMANT were kept confidential until 30 June 2010 when the deal was concluded. The Share Purchase Agreement was signed on 27 July 2010. Due to the signing of the Share Purchase Agreement the signing of the Development and Sales Agreement originally planned for the 27 July 2010 had to be postponed to 1 August 2010. Only when the signing date had to be changed did RESPONDENT learn about the sale of CLAIMANT.

**2. What is the corporate relationship between Claimant and its parent company?**

CLAIMANT, a Limited company, is an independent legal entity with its own management which also takes its own decisions. As the shares of the company are owned 88% by the parent company, CLAIMANT's management discusses all important decisions which go beyond the day to day business with the parent company.

**3. Are there any other special risk sharing provisions apart from Section 4 in the Development and Sales Agreement or were such provisions at least discussed during the negotiations between the parties?**

No.

**4. Does the contract contain a provision requiring any modification or termination to be in writing or an entire agreement clause?**

No.

**5. What are the dates of the two earlier contracts concluded between the Parties and what are their rules on pricing and exchange rate?**

The TRF 155-II contract was concluded on 4 March 2003 and TRF 163-I contract on 3 January 2005. Both contracts contain a price clause which is in its structure largely identical to Section 4 of the Development and Sales Agreement with the exception that the price clauses did neither contain a minimum nor a maximum price, so that irrespective of the final costs of the fan Claimant would from a certain threshold onwards at least recover its costs and make a profit of 1%. Furthermore, the actual prices in US\$ and the thresholds differed.

The value of the goods bought under TRF 155-II contract was US\$ 12,300,000 and under TRF 163-I contract it was US\$ 15,250,000. In both cases, exchange rates were not discussed during the negotiation. Under the TRF 155-II contract there was a difference of 0,03 EQD between the exchange rates at the time of contract formation and contract performance in January 2006. No such difference existed for the TRF 163-I contract which was performed in May 2008. Both times, Engineering International SA told the Parties to adopt the exchange rate which was profitable for RESPONDENT. For tax purposes Engineering International SA

wanted to ensure that the larger part of the profit made from the transaction was subject to the more favorable tax regime in Mediterraneo. In the case of the TRF 155-II contract that was the exchange rate at the time of contract formation which was then also mentioned in the invoices for the TRF 163-I contract. The finance department of Engineering International SA consider the use of eventual exchange rate fluctuations to allocate profits accordingly as an important tool in their tax optimization strategy.

**6. Who drafted and/or proposed the bank charges provision in the Development and Sales Agreement?**

Section 4, including the provision on bank charges, was taken from the agreement between the Parties concerning the fan TRF 155-II of March 2003. In the previous contract RESPONDENT had drafted the provision. The inclusion into the Development and Sales Agreement for the TRF 192-I was, however, suggested by CLAIMANT.

**7. When did ML/2010C enter into force and what is the background to the fees charged?**

ML/2010C entered into force on 1 January 2010 as part of a package by which the Equatorianian government tried to improve the bad reputation of Equatoriana as a safe haven for money of dubious origin. In December 2009, there had been considerable coverage in the Equatorianian press that the government was implementing extensive legislation based on the UN-Model Provisions on Money Laundering, Terrorist Financing, Preventive Measures and Proceeds of Crime. It was reported that a Financial Intelligence Unit should be established under the auspices of the Equatoriana Central Bank with considerable investigation powers. Furthermore, the newspapers reported about considerable criticism concerning the cost allocation for such examinations by the leading business associations. They noted that under the rules adopted Equatoriana would be one of six countries worldwide where private parties had to pay a fee for such type of investigations and clearances. In view of the business associations these tasks form part of the general governmental duties to prevent money laundering and should be paid out of the general state budget. The fees generated under Section 12 ML/2010C were supposed to be part of the budget of the Equatoriana Central Bank, which is a government entity with an own budget but which transfers its annual profits to the Minister of Finance. The foreign press, including newspapers in Mediterraneo merely reported that the Equatorianian government took actions against money laundering without providing any details concerning the costs involved.

**8. Had CLAIMANT or RESPONDENT knowledge about ML/2010C at the time the parties concluded the Development and Sales contract?**

CLAIMANT was aware of the press reports from December 2009. Its financial department, however, only looked at the actual provisions of ML/2010C in detail in the mid of June 2010 when it discovered that the levy had been deduced from the payment of US\$ 6,300,000 by JetPropulse, made at the end of May 2010. As the contract with JetPropulse had been concluded in January 2009 and did not specifically provide of who should bear the costs for payment CLAIMANT's management decided not to claim an additional amount from JetPropulse which was a long-standing customer. The persons negotiating the Development and Sales Agreement on CLAIMANT's side had no knowledge about the specific provisions of ML/2010C nor were they aware of the deduction of the levy from the JetPropulse payment at the time of negotiations. Furthermore, in mid-June 2010, when CLAIMANT's financial department had a look at the specific provisions of ML/2010C the Parties in the present arbitration had already agreed on taking over Section 4 and were only discussing the exact US\$ amount thresholds, from which a new profit margin should apply. RESPONDENT's negotiators had no knowledge about the content of ML/2010C as CLAIMANT is the only supplier or costumer from Equatoriana and no comparable levy exists in Mediterraneo.

**9. Which party paid the levy in the second instance mentioned?**

In the second instance mentioned by RESPONDENT, the levy charge concerned a payment by JumboFly, CLAIMANT's largest customer, in December 2011. The payment of US\$ 5,300,000 concerned an emergency purchase by JumboFly concluded in March 2010, which was concluded on very favorable terms for CLAIMANT which made a profit of 8% under the contract. The contract did not contain any rule as to which party had to bear the bank charges. In light of the importance of the customer CLAIMANT decided not to claim the levy deducted from the amount transferred and credited to CLAIMANT's account.

**10. What is the banking mechanism adopted by the Central Bank in the country of Equatoria?**

All payments into Equatoria are under the new regime implemented by the Government routed via the Equatoria Central Bank to ensure the operation of ML/2010C. Whenever the amount is above the limit of US\$ 2 million (or the equivalent amount in EQD or any other currency) the Financial Intelligence Unit, which is a subdivision of the Equatoria Central Bank, established by ML/2010C, will examine the transfer and make own investigations, if necessary. These investigations may take up to three weeks. Only after a clearance for the transfer is given will the amount be credited to the relevant bank account with the respective commercial bank in Equatoria, in the present case the Equatoria National Bank.

**11. At what date did Ms Beinhorn approach the Equatoria National Bank, and what did she specifically ask about?**

Ms Beinhorn, who was not aware of the levy, approached Equatoria National Bank directly after the receipt of the e-mail from Mr. Lindbergh on 10 February 2010 to enquire why not the full amount was credited to CLAIMANT's account. The bank referred the enquiry to the Equatoria Central Bank which replied on 12 February 2010 with the letter submitted as Exhibit C 8.

**12. What was the exchange rate at the relevant points in time?**

From 1. September 2007 – 1. September 2010 the exchange rate was very stable, fluctuating in a corridor of US\$ 1 = 2.00 EQD and US\$ 1 = 2.02 EQD. On the date the Development and Sales Agreement was supposed to be signed (27 July 2010) it was US\$ 1 = 2.01 EQD and the day it was signed it was US\$ 1 = 2.00 EQD. Due to an unexpected resignation of the Equatorian Prime Minister and the hope that her successor would be more free trade minded the exchange rate went down to US\$ 1 = 1.98 EQD on 1 October 2010. It went up again into the previous range when surprisingly a different candidate belonging again to the protectionist wing of the ruling party was selected as Prime Minister on 3 October 2010. From 20 - 25 October 2010 the exchange rate was at US\$1 = 2.01 EQD. The exchange rate stayed fairly stable in the corridor until 2 January 2012, when a new free trade oriented government was elected. From the end of 2012, when it became clear that Equatoria would under its new government join a large free trade zone created by its neighboring countries, the exchange rate has been falling gradually to US\$ 1 = 1.76 EQD on 3 March 2014. Since then, it has been fluctuating between US\$ 1 = 1.76 EQD and US\$ 1 = 1.80 EQD. The blades were produced from 1 May 2014 onwards. At the time of delivery, the exchange rate was US\$ 1 = 1.79 EQD. That is also the average rate for the time of producing the blades.

**13. Is there any usage as to the exchange rate in the aircraft industry?**

There is no fixed usage as for cost-plus contracts the parties normally explicitly agree on the exchange rate or the relevant date for the exchange rate. The agreements depend on the bargaining power and which party either has a better opportunity to hedge the risk or is willing to take the risk.

**14. In what currency does each of Engineering International SA, CLAIMANT, and RESPONDENT normally keep their accounts?**

Engineering International SA and RESPONDENT keep their account in US\$ and the consolidated accounts at group level for the Engineering International SA are also kept in US\$. That is due to the fact, that in the aircraft industry contracts are normally denominated in US\$. The contract between RESPONDENT and Earhart also provided for payment in US\$. CLAIMANT kept its accounts in EQD but published an “international financial statement” in US\$.

**15. Did any discussions take place between CLAIMANT and RESPONDENT regarding the issue of exchange rates during the negotiation of the Development and Sales Agreement?**

No.

**16. What was the intention of inserting an addendum into the Development and Sales Agreement instead of simply concluding a second, separate contract?**

That was done for pure convenience. In his call of 21 October 2010, in which Mr Romario informed Ms Beinhorn about RESPONDENT’s intention to order the clamps, he had suggested to include the purchase of the clamps into the existing contract since delivery of fans and clamps should be done together.

**17. Were there any further communications between the Parties regarding the exchange rate to be used or was the topic only treated in the e-mails of 22 and 24 October 2010 [Exhibits R2, R4]?**

No, there were no further communications. The fixed exchange rate was first suggested in Mr Romario’s e-mail of 22 October 2010.

**18. Did the individuals negotiating the addendum, Paul Romario and Amelia Beinhorn, have knowledge of the currency de-risking strategies discussed at the meeting on the 9 November 2009?**

In both companies, the relevant persons, including Mr Romario and Ms Beinhorn were informed on 10 November 2009 by their respective CEO’s via e-mail about the outcome of the meeting including the discussions about de-risking RESPONDENT. Whether they remembered that e-mail at the time of negotiating the addendum is not known.

**19. Is there any indication in the invoice as to how the price was calculated?**

Yes. The invoice set out the production costs per fan in EQD, mentioned the exchange rate for converting them in US\$, the formula to calculate the final price as well as the final price itself.

**20. Did either party purchase any currency hedges relating to the fan blade purchase?**

No.

**21. Who proposed the 60 day time limit for arbitration in Section 21 of the Development and Sales Agreement?**

It was taken from a previous contract between the Parties and was the standard dispute resolution clause used in all contracts between companies belonging to the Engineering International SA group of companies. There is no further information available about the origin or the purpose of the clause.

**22. How was Wright Holding PLC involved in the negotiations, drafting and conclusion of the Development and Sales Agreement, and subsequently in filing the Request for Arbitration?**

Before the purchase of CLAIMANT there was no direct involvement, though as a potential buyer Skymover was informed about the basic structure and the potential of the deal. When the dispute arose with RESPONDENT the management of CLAIMANT involved Wright Holding



PLC as it wanted a general policy decision as how to deal with customer complaints concerning the levy

**23. Were the persons who attended the meeting on 31 March 2016 authorized to conclude an agreement and was there any reaction by RESPONDENT to CLAIMANT's communication of 1 April 2016?**

The persons attending the meeting were authorized to sign a settlement agreement should such a settlement be reached. At the meeting, RESPONDENT insisted on making no further payment under the present contract, and was not willing to commit to the purchase of another 2000 blades. CLAIMANT, however, had insisted on the application of the current exchange rate to the contract and was only willing to discuss a fixed exchange rate and a rebate in conjunction with further orders. In light of these fundamental differences between the Parties RESPONDENT did not react to the Email of 1 April 2016.

**24. What are the contents and the validity requirements under the law of Equatoriana regarding Powers of Attorney?**

The only special provision in the law of Equatoriana concerning powers of attorneys is section 264 of the Code of Civil Procedure, according to which such powers have to be in writing and must be submitted for the initiation of court proceedings unless the parties agree otherwise. Apart from that powers of attorney are governed by the general law on agency which is a verbatim adopt of the relevant rules in the 2010 UNIDROIT Principles. The same applies for the Law of Danubia.

**25. Did Mr Fasttrack represent CLAIMANT in the negotiations preceding the arbitration or any previous proceedings which RESPONDENT knew about?**

No.

**26. Which principle of allocation of costs is applied in Danubia, Equatoriana and Mediterraneo?**

The arbitration law as well as the procedural law are based in principle on the "cost follow the event" principle, which is applied strictly in court proceedings while an arbitral tribunal has considerable discretion to deviate from the principle and allocate the costs differently.

**27. When did CLAIMANT start to develop the TRF-305 fan for small engines and was that known to RESPONDENT?**

*The development for the TRF-305 started at the end of 2014. RESPONDENT knew about the fact that the engine was developed and is meant to be completed in 2016 but had no knowledge about financial details when drafting the terms of reference.*

**28. Were CLAIMANT's financial statements publicly available and what were the relevant figures for the years 2009, 2010 and 2015?**

CLAIMANT's audited accounts for the years 2009, 2010 and 2015 were publicly available in April of the years 2010, 2011 and 2016. It has not been established that RESPONDENT looked at them before preparing its Request for Security for Costs.

The loss of USD 760,000 in 2010 results from the fact that in 2009 Claimant estimated to have a claim against Xanadu of US\$ 15,000,000. The award rendered in June 2010 was, however, only for US\$ 12,000,000. After payment in 2010, the amount went in the position "Cash and cash equivalents" in 2010 while the claim was removed from the balance sheet. The position "other assets" in the amount of 12,000,000 listed in the financial statements of 2009 include the concession which was withdrawn by Xanadu later in 2010. Therefore, it is listed in 2010 as a claim in that amount (against Xanadu). It was the subject of the second arbitration resulting in an award in 2013, which was paid that year and led to an increase in the position "Cash and cash equivalents" in 2013 and the removal from the position "claims".

The payment received from Respondent in the beginning of 2015 under the Development and Sales Agreement was used primarily to pay back short term bank loans which had become due and to pay for the development of the TRF 305. The development work which went into the TRF 305 is reflected by the increase of the position “intangible assets” in 2015.

Excerpts of the financial statements of Wright Limited  
for the years ending 31 December 2009, 2010 and 2015

	2009	2010	2015
	US \$	US \$	US \$
<b>ASSETS</b>			
Cash and cash equivalents	875.000,00	10.856.000,00	199.950,00
Trade and other receivables			
Claim	15.000.000,00	12.000.000,00	
other assets	12.000.000,00		478.000,00
Non-Current assets			
Intangible asset	501.000,00	376.000,00	4.500.000,00
Property, plant and equipment	29.399.000,00	28.987.000,00	37.580.000,00
Total assets	57.775.000,00	52.219.000,00	42.757.950,00
<b>LIABILITIES AND EQUITY</b>			
Current liabilities			
Bankloans	31.000.000,00	31.000.000,00	21.000.000,00
Loan from mother company		1.500.000,00	3.000.000,00
others	23.747.000,00	17.451.000,00	16.532.950,00
Equity			
Profit for the year	2.578.000,00	-760.000,00	657.000,00
Retained earnings at start of the year	450.000,00	3.028.000,00	1.568.000,00
Total liabilities and equity	57.775.000,00	52.219.000,00	42.757.950,00
Turnover	61.000.000,00	59.670.000,00	61.800.000,00
Profit of the year	2.578.000,00	-760.000,00	657.000,00

**29. Is there a third party funding CLAIMANT in the arbitration proceedings?**

No. CLAIMANT has approached two third party funder but both rejected to provide funding as the case was too small for their funding guidelines. In the end, CLAIMANT used liquidity provided by Wright Holding PLC under a parent company loan of US\$ 3,000,000 granted to CLAIMANT in December 2015 to provide the necessary liquidity for the final stages of production of the TRF-305 fan.

**30. Has CLAIMANT's supplier who won a US\$ 2,500,000 award moved to have that award enforced in a domestic court under the New York Convention?**

Yes. The case is still pending and CLAIMANT has declared a set-off with the claim upon which it also relies in this arbitration. The supplier has objected to the set-off.

**31. Were there any insolvency or bankruptcy proceedings initiated against CLAIMANT or any attempts made by a third party?**

No

**32. Have CLAIMANT and RESPONDENT met their obligations under Art. 12 of CAM-CCBC Rules?**

Yes.

**33. Are there any other arbitral or enforcement proceedings that CLAIMANT is involved in apart from the ones mentioned in the file?**

No.

**34. How did CLAIMANT create the impression that an award of at least US\$ 100 million was imminent?**

At the meeting of 9 November 2009 Mr Coutinho was asked by his colleagues about the prospects of the ongoing arbitration and informed them that he was expecting at least half of the amount claimed in the arbitration, i.e. around US\$ 100 million. At the first meeting to discuss the Development and Sales Agreement at management level RESPONDENT's representatives were informed that no award had yet been rendered but that CLAIMANT was still very confident in receiving a substantial award in its favor.

**35. Are the countries involved Contracting States of the New York Convention?**

Yes.

**36. Are the countries involved parties to any other multilateral or bilateral conventions concerning arbitration that might be relevant?**

No.

**37. Did Danubia adopt the UNCITRAL Model Law as amended in 2006 verbatim and is there any case law on security for cost under the Danubian Arbitration Law?**

Danubia adopted the UNCITRAL Model Law with the 2006 amendment verbatim and there is no case law on security for costs in arbitration by Danubian courts so far.

**38. CLAIMANT has asked for the following clarifications and corrections:**

- a. P.4 para. 5: the reference should be to the file note of 1 May 2010 and not 1 July 2010.
- b. P.5 para 12: the reference that "the price per fan blade was US\$ 10,941.90" is in so far misleading, as it refers to the costs incurred by CLAIMANT per fan blade to which the profit of US\$ 420 has to be added, to arrive at the actual price charged of US\$ 11,361.90. The unprecise wording "price" instead of "cost" is also used in paras 14 and 17, Exhibit C 5 and in para. 17 of RESPONDENT's Answer.
- c. P. 5 paras 13 and 14 are referring to wrong dates. The faxes were sent on 9 and 10 February 2015 and not on 1 and 2 February 2015.
- d. P. 6 para. 16: the reference should be to Section 12 of ML/2010C and not to Section 11 of ML/2014C.
- e. P. 6 para. 19: the arbitration clause is not properly quoted.
- f. In Exhibit C 7 the Development and Sales Agreement mentioned is the Development and Sales Agreement of 1 August 2010. The reference to 1 June 2010 is wrong.
- g. The Power of Attorney by Wright Holding Plc was signed on 2 April 2016 and not as stated on 2 January 2016.
- h. In Exhibit C 9 the reference to "our 2010 international balance sheet" is referring to the balance sheet published in February 2010 for the year 2009.
- i. The amount claimed is US\$ 2,387,432.80. References to a lower amount of US\$ 2,387,430.80 are based on a typo which occurred in Exhibit C 6 and has been reproduced in the Terms of Reference.

**39. RESPONDENT has asked for the following corrections and additions**

- a. P. 31: The witness statement of Mr Paul Romario should be dated 20 June 2016.
- b. In para. 2 of the Request for Security for Costs (p. 46) the date at which the Chamber of Commerce was informed about CLAIMANT's non-compliance with the award is 1 September 2016 and not 4 September 2016.
- c. The reference in para. 2 of the Request for Security for Costs (p. 46) should be to Exhibit R 6 instead of Exhibit R5
- d. The references to the Xanadu Investment Arbitration in Exhibit R 5 and 6 are not correct but based on a misunderstanding of the journalist who mixed up two investment arbitrations brought against the government of Xanadu. In the proceedings relied upon by RESPONDENT, CLAIMANT had to close-down its subsidiary in Xanadu in January 2008. The award ordering the government of Xanadu to pay 12 million was rendered on 7 June 2010 and not in 2013 as stated in the article. At that time, a separate award for the same amount had been rendered in the second arbitration involving the withdrawal of a concession which occurred in 2010, which was also funded by Finance You, which led to the misunderstanding of the journalist. Information about both awards became public only in 2016.

**40. Tribunal wants to clarify and correct the following in its Procedural Order No. 1:**

- a. The reference in para. 5 (1)(c) of PO 1 to the "present exchange rate" is a reference to the exchange rate of US\$ 1 = 1,79 EQD referred to as "current rate" in para. 22 of the Request for Arbitration.
- b. In para. 5 (1)(c)(ii) of PO 1 it should read "deducted" instead of "deduced".

**41. The top level domain for all e-mails by Wright Ltd should be ".eq" and for all e-mails by SantosD KG should be ".me".**

For the Arbitral Tribunal



President of the Tribunal