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Arbitration Institute of the Stockholm Chamber of Commerce
P.O. Box 16050, SE-103 21 STOCKHOLM, Sweden

AWARD

In SCC Arbitration 010/2006

JSC TECHSNABEXPORT

Claimant

(Russian Federation)

And:

PALMCO CORPORATION

Respondent

(United States of America)

Arbitral Tribunal: Bernard Hanotiau, Chairman, Hans Danelius and Robert Briner

Place of Arbitration: Stockholm, Sweden

CHAPTER I. THE PARTIES

1. The parties to this arbitration are :

Claimant:

JSC TECHSNABEXPORT, a joint stock company organized under the laws of the Russian Federation, with its office at 26, Staromonetniy per., 119180, Moscow, Russia,

hereinafter referred to as "Claimant" or "Tenex",

assisted and represented in this arbitration by:
Sigvard Jarvin and Carroll Dorgan of Jones Day, 120 rue Faubourg Saint-Honoré, 75008 Paris, France, and Timur Aitkulov and Julia Popelysheva of Clifford Chance, ul. Sadovaya-Samotechnaya 24/27, 127051, Moscow, Russia;

Respondent:

PALMCO CORPORATION, a corporation organized under the laws of the State of California, with its office at 5000 Birch Street, Suite 4700, Newport Beach, CA 92660, USA,

hereinafter referred to as "Respondent" or "Palmco",

assisted and represented in this arbitration by :
Michael G. Yoder and Marcus S. Quintanilla of O'Melveny & Myers LLP, 610 Newport Center Drive, 17th Floor, Newport Beach, CA 92660, USA.

2. The place of arbitration is Stockholm, Sweden.

3. Claimant and Respondent are hereinafter jointly referred to as « the Parties ».

CHAPTER II. THE ARBITRATION CLAUSE AND THE ARBITRAL TRIBUNAL

Section I. The arbitration clause

4. The dispute arises from the Contract for the Supply of Enriched Uranium ("the Inventory Contract"), signed by the Parties on September 5, 2001. Article 13 of the Inventory Contract provides that:

> "*13.1. This Contract shall be governed by and construed in accordance with the laws of the Kingdom of Sweden.*
>
> *13.2 Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Rules of Arbitration of the Stockholm Chamber of Commerce. For this purpose three (3) arbitrators shall be appointed in accordance with the said Rules.*

13.3. The place of arbitration shall be Stockholm, Sweden, and the arbitration procedure shall be conducted in the English language".

Section II. The Arbitral Tribunal

5. Pursuant to the Stockholm Chamber of Commerce Rules in their wording before January 1, 2007 (hereinafter "the SCC Rules"), the Arbitral Tribunal has been appointed as follows :

- In its Request for Arbitration dated January 26, 2006, Tenex appointed Justice Hans Danelius (Roslinvägen 33, 168 51 Bromma, Sweden) as arbitrator;
- In its Reply to the Request for Arbitration, dated February 24, 2006, Palmco appointed Dr Robert Briner (Lenz & Staehelin, Route de Chêne 30, CH 1208 Geneva 17, Switzerland) as arbitrator;
- Justice Danelius and Dr. Briner appointed Dr. Bernard Hanotiau (avenue Louise 480, 1050 Brussels, Belgium) as chairman of the Arbitral Tribunal.

CHAPTER III. THE PROCEDURE

6. The parties filed the following submissions:

- Claimant filed its Request for Arbitration on January 26, 2006, together with exhibits CX1 – CX5;
- Respondent filed its Answer to the Claim and Statement of Counterclaim on February 24, 2006, together with exhibits RX1 – RX 25;
- Claimant filed its Answer to the Counterclaim on July 19, 2006;
- Claimant filed its Statement of Reply in support of the Claim on December 15, 2006, together with exhibits CX6 – CX20;
- Respondent filed its Statement of Rejoinder to the Claim and Reply in support of the Counterclaim on January 26, 2007, together with exhibits RX26 – RX 74. It also subsequently filed exhibits RX 75 – RX 77.
- Claimant filed its Statement of Rejoinder to the Counterclaim on February 26, 2007, together with exhibits CX21 – CX 24.

7. Three procedural orders were issued respectively on October 9, 2006, November 20, 2006 and February 8, 2007.

8. On November 28, 2006, the Parties and the Arbitral Tribunal executed a Confidentiality Order.

9. The hearing took place in Stockholm from March 12 to 14, 2007. The following witnesses were heard: Mr Igor N. Zhivoglyad and Mr. Sergey N. Pluzhnik, Claimant's fact witnesses;

Mr J.W. Lee, Respondent's fact witness; Professor Jan Ramberg, legal expert for Claimant; Professor Eric Nerep, legal expert for Respondent.

10. After the testimonies, the Parties presented oral closing arguments. They renounced to filing post-hearing submissions. Upon request of the Chairman, the parties confirmed at the end of the hearing that they had no procedural objections as to the way the procedure had been conducted. The Tribunal then closed the debates.

CHAPTER IV. THE CLAIMS

Section I. Relief sought by Claimant

11. Tenex requests the Arbitral Tribunal to:

(a) determine that the Purchase Price for 2005 should be USD 954/kgU;

(b) order Palmco to pay USD 3,212,400 to Tenex, representing the difference between the amount to be paid by Palmco in accordance with the Purchase Price stipulated by Addendum No. 4 and the amount that Palmco should pay in accordance with the Purchase Price determined by the Tribunal;

(c) order Palmco to pay interest upon all amounts awarded to Tenex at the rate of LIBOR plus 1% per annum, running from the date when the payment for Enriched Uranium is due until the date of full payment by Palmco of the amounts owed to Tenex;

(d) dismiss Palmco's counterclaim in its entirety;

(e) order Palmco to pay the full amount of the Arbitration costs, in accordance with Clause 13.4 of the Inventory Contract and Article 40 (2) of the SCC Rules, with interest at a rate corresponding to the Swedish official reference rate plus eight percent per annum, from the date of the Arbitral Tribunal's award until the date of full payment.

Section II. Relief sought by Respondent

12. Palmco requests the Arbitral Tribunal:

- to dismiss Tenex's request that the Arbitral Tribunal determine the Purchase Price for 2005 under the Inventory Contract;
- to dismiss Tenex's request that Palmco be ordered to pay Tenex USD 3,212,400;
- in the event that the Arbitral Tribunal finds that it is authorized to determine the Purchase Price for 2005 under the Inventory Contract, to determine the Purchase Price to be fixed at 739,84/kgU, as agreed by the Parties and set forth in Addendum No. 4;
- in the event that the Arbitral Tribunal determines that the Purchase Price for 2005 exceeds the price of the Addendum No. 4, to order Palmco to pay Tenex only such amount as equals the difference between what Palmco has already paid and the amount of the Arbitral Tribunal's re-determined Purchase Price;

- to decide that Tenex breached the Parties' Inventory Contract by refusing to deliver the ordered Enriched Uranium Product ("EUP") in November 2004;
- to order Tenex to deliver to Palmco not later than six months from the date Palmco shall request delivery following the issuance of the Tribunal's award, 16 metric tons of EUP of 4.5 percent assay at the price of USD 711.11 per kgU;
- alternatively, if for any reason Tenex is not ordered to deliver the EUP, to order Tenex to pay Palmco lost profits in the amount of USD 1,402,240, representing the amount which Palmco would have earned on its Inventory Contract with Korea Hydro & Nuclear Power Co. Ltd ("KHNP") for the November 2004 delivery;
- in addition to either of the two alternative remedies set forth above, to declare that Tenex is obligated to indemnify Palmco for any amount in late delivery penalties or costs for the purchase of replacement goods that Palmco is held liable, under applicable law, to pay to KHNP in connection with Palmco's inability to make the 2004 EUP delivery;
- to order Tenex to pay interests on the amounts awarded under the foregoing prayers, which interests shall accrue from February 24, 2006 until the date on which payment is made in full, in accordance with the Swedish Interest Act, Sections 4 and 6;
- to decide that the costs of the arbitration shall be borne by Tenex, and accordingly, to order Tenex to compensate Palmco for its costs of arbitration – namely, all amounts paid to the arbitrators for their fees and expenses, as well as administrative fees and expenses of the SCC.

CHAPTER V. SUMMARY PRESENTATION OF THE DISPUTE

13. Tenex is a joint stock company organized under the laws of the Russian Federation. The Ministry of Property Relations of the Russian Federation owns 100% of the shares of Tenex. Tenex has been involved in the nuclear fuel cycle business since 1963 and in exports of uranium from Russia (or the USSR) since 1973.

14. Palmco is a corporation organized under the laws of the State of California, United States of America, where its principal place of business is located. Palmco's primary line of business consists in the supply of non-weapons-grade uranium products and services for use in civilian nuclear power plants in South Korea.

15. Since the late 1980's, Palmco has purchased substantial quantities of Russian civilian-grade uranium from Tenex, in order for Palmco to supply that uranium to Palmco's most important customers – Korea Electric Power Company ("KEPCO") and KEPCO's subsidiary KHNP, for the production of fuel for civilian power plants in the Republic of Korea ("South Korea").

16. On December 28, 1988, Palmco and Tenex entered into a Contract for Furnishing Enriched Uranium Hexafluoride ("the Main Contract"). Under this contract, Tenex agreed to sell, and Palmco agreed to purchase, certain specified quantities and specifications of EUP, at established prices, for a term of 10 years. The Main Contract was later extended and will remain in force through December 31, 2009.

17. In addition to the Main Contract, Palmco facilitated the further distribution of Russian uranium to the South Korean power utilities through a service contract. In December 1993, KEPCO and Tenex indeed entered into a Uranium Enrichment Services Contract ("the Services Contract"). Under this contract, Tenex agreed to perform certain enrichment services for KEPCO. Moreover, pursuant to a Supplemental Agency Agreement ("the Agency Agreement"), Tenex designated Palmco as its exclusive agent for the administration of the Enrichment Services Contract.

18. On December 20, 2002, Tenex and Palmco also entered into a Uranium Concentrates Supply Contract. Under this contract, Tenex agreed to sell, and Palmco agreed to purchase, specified quantities of U_3O_8 – a less refined form of uranium from which natural UF_6 is ultimately derived. In conjunction with this contract, Palmco and Tenex entered into a second contract, the Contract for Conversion Services Supply - under which Tenex agreed to perform the conversion process whereby U_3O_8 transferred to Palmco would be converted into natural UF_6 for eventual supply to KHNP.

19. In 2001, Tenex engaged Palmco to represent it in a bidding process in which KHNP sought bids for the supply of EUP for inventory purposes – *i.e.*, the maintenance of civilian uranium stockpiles. Palmco undertook extensive efforts as Tenex's representative in the bidding process, and eventually succeeded. Accordingly, on September 5, 2001, Palmco and Tenex entered into the Inventory Contract, which is at issue in this arbitration. Under this Contract, Palmco agreed to purchase, and Tenex agreed to sell, certain specified quantities and specifications of EUP for the years 2001 and 2002. For the calendar years 2003-2005, Palmco had an option, in accordance with Clause 5.1.2, to purchase certain quantities of Enriched Uranium. The purpose of this contract was to enable Palmco to supply additional quantities of EUP to KHNP. A specific contract was concluded between Palmco and KHNP in this respect.

20. Article 3 of the Inventory Contract specified the Purchase Price. The Parties agreed to "*fixed purchase Prices in U.S. Dollars per kg U of Enriched Uranium ... for each Delivery Year*" (Clause 3.1). Clause 3.3 further provided that "*If the situation in the world uranium market changes substantially, either Party starting from the year 2003 shall have the right to approach the other Party with a request to revise the Purchase Prices stipulated in Clause 3.1*". The Purchase Price for 2001 was approximately 20% below the market price at the time of concluding the Contract.

21. Article 5 of the Inventory Contract governed the delivery by Tenex of Enriched Uranium to Palmco. In order to exercise an option to purchase Enriched Uranium in the delivery years 2003-2005, Palmco was required to give notice before January 1st of the relevant delivery year (Clause 5.1.2.). Palmco was also required to issue certain notices for all deliveries (Clauses 5.1.3 and 5.1.4).

22. After the conclusion of the Inventory Contract, the world uranium market changed. It is Claimant's position that, by the end of 2003, the market price for Enriched Uranium had risen by more than 17% from its level in September 2001 and that consequently Clause 3.3 of the

Inventory Contract obliged the Parties to agree upon a reasonable revision of the Purchase Price. This position is disputed by Respondent. Claimant tried to obtain a revision of the purchase price but without success. The Parties did not reach an agreement. Moreover, for various reasons which will be examined in detail below, there were no deliveries of EUP by Tenex for Palmco in 2004.

23. On December 27, 2004, Palmco informed Tenex that it would exercise its option to order Enriched Uranium for delivery in 2005. Tenex answered that the Parties had first to come to an agreement upon a revision of the Purchase Price. After long negotiations, the Parties finally executed Addendum No. 4 to the Inventory Contract on September 7, 2005. They agreed to a price that would incorporate a 2% increase over the price quoted in the Inventory Contract (coming to a price of USD 739.84/kgU) and proceeded on this basis. The Parties proceeded with the sale of 15,000 kg of Enriched Uranium.

24. According to Claimant, however, the price of USD 739.84/kgU was merely "provisional" and subject to a final determination by an arbitral tribunal as specifically provided by Addendum No. 4. Palmco disputes this position and submits that it never agreed to have the new price revised subsequently by a panel of arbitrators.

25. Since the Parties could not agree on these issues, Claimant initiated this arbitration. It requests the Arbitral Tribunal to determine that the Purchase Price for 2005 should be USD 954/kgU and therefore to order Palmco to pay USD 3,212,400 to Tenex, representing the difference between the amount to be paid by Palmco on the basis of the Purchase Price stipulated in Addendum No. 4 and the amount that Palmco should pay in accordance with the new Purchase Price to be determined by the Tribunal.

26. According to Respondent, Claimant's claims should be dismissed. Moreover, Respondent considers that Tenex breached its obligations to deliver to Palmco certain quantities of EUP in accordance with the Inventory Contract in 2004. It requests the Arbitral Tribunal to order Tenex to deliver to it 16 metric tons of EUP at the price of USD 711.11 per kgU; and alternatively, to order Tenex to pay Palmco its lost profits on this delivery in the amount of USD 1,402,240.

CHAPTER VI. THE PARTIES' POSITIONS

Section I. The position of Claimant

I. The facts

A. General background

27. The dispute between the Parties arises principally from their differing interpretations of Clause 3.3 of the Inventory Contract. From December 2004 to September 2005, the Parties exchanged opposing views regarding a revision of the Purchase Price in 2005, in light of the

increases in world market prices for uranium. According to Claimant, the Parties eventually "agreed to disagree": they agreed to a price for the 2005 delivery of EUP that was "*provisional and subject to a final determination by an arbitral tribunal*" (Addendum No. 4).

28. The Parties had already addressed this issue in correspondence during 2003-2004, in relation to the Purchase Price for 2004. They did not reach an agreement for the year 2004. In this respect, although Palmco now speaks of damages ranging around USD 20 million, Claimant points out that Palmco did not make any such allegations at the time.

29. Moreover, Claimant submits that Palmco seeks to expand the dispute between the Parties and buttress its position in this arbitration by fabricating a grand conspiracy theory. Indeed, according to Palmco, the Parties' dispute must be situated within the broader context of the Parties' historic relationship and Tenex's current efforts to supplant Palmco as a direct supplier of uranium to the South Korean market.

30. In this context, Palmco makes gratuitous allegations of many contractual violations by Tenex. According to Claimant, these allegations are false. Moreover, they are irrelevant. Tenex rejects them and even refuses to address them, since they have no probative value in determining whether the Parties are entitled to the relief that they claim in this arbitration.

B. Negotiations regarding Clause 3.3 of the Inventory Contract

31. Clause 3.3 is central in the framework of this arbitration. The Parties have divergent views on this provision. Negotiations between Tenex and Palmco regarding the conclusion of the Inventory Contract started in spring 2001. Palmco informed Tenex that KHNP planned to purchase EUP in the period of 2001-2005, through a tender process, as part of a strategic reserve build-up initiative.

32. According to Claimant, at the outset of the negotiations, the Parties entered into a Memorandum of Understanding dated May 17, 2001 ("the MOU"), in which they fixed the principal terms on which the future contract should be based and also the principles on which Palmco should negotiate with KHNP. The MOU provided, among other things, that Palmco had information that the Purchase Price for optional quantities of EUP would be based on the prevailing market price. Palmco was to negotiate its contract with KHNP on the basis of the MOU and price offers that Tenex would make to Palmco.

33. At the beginning on 2001, Tenex sent Palmco price offers. The first offer was dated June 5, 2001. It included two options:

- Option 1: EUP of ASTM C-996-90 specifications and
- Option 2: EUP of ASTM C-996-96 specifications.

34. Palmco asked Tenex to reduce the prices. After some discussions, Tenex offered a price which was approximately 20% below the market price. However, Claimant alleges that since it wanted to avoid the gap between the contract price and the market price becoming any larger, Tenex included in its amended price offer a provision stipulating that in the event "*substantial changes in the market situation take place, both parties shall have the right to propose to review the prices for years 2002-2005*". This provision would not automatically adjust the contract prices, but it enabled Tenex to request a price adjustment corresponding to the market growth, Palmco having to renegotiate the price and to agree on an appropriate price adjustment.

35. At the end of June 2001, Palmco sent Tenex a draft contract. This draft did not include the "*market change*" provision. Tenex informed Palmco that it would provide comments on the draft. However, before Tenex commented on the draft, Palmco, on July 13, 2001, informed Tenex that it had already concluded negotiations with KHNP and proposed amendments to the draft contract "*to assure the terms and conditions of Palmco's contract with Techsnabexport are consistent*".

36. One of the two amendments suggested by Palmco was the following: "*Article 2.1.3 is to be added as follows: If KHNP decides not to order the optional quantities at any given year during 2003-2005 due to a substantial price differential between the prevailing market price and the contract price, the Buyer may have the option to request an alternative price offer and, subsequently, both parties enter into a negotiation.*"

37. On July 23, 2001, Tenex suggested deleting Clause 2.1.3 of the draft and inserting a clause similar to the "*market change*" clause contained in its original price offer: "*If the situation in the world uranium market changes substantially, either Party starting from the year 2003 shall have the right to approach the other Party with a request to revise the Purchase Prices stipulated in Clause 3.1*". This clause was included in the Inventory Contract without any amendments. It was not even discussed at all.

C. Discussions between the Parties regarding revision of the contract price for the year 2004

38. According to Claimant, in the second half of 2003, it became clear that the prices for uranium products were growing tremendously. In particular, at the World Nuclear Association Annual Symposium on September 3-5, 2003, Michael J. Connor, President of Nuclear Resources International, Inc., made a report in which he concluded that the gap between supply and demand was increasing.

39. Therefore, on October 8, 2003, Tenex sent Palmco a request to revise the price pursuant to Clause 3.3. Palmco answered on October 13, 2003 that it did not see any basis for a price revision, since as of September 2003 the price of EUP had increased by only approximately 9% since the Inventory Contract was concluded and the contract price had increased over the period by approximately 6%. On November 14, 2003, Tenex came back to Palmco with detailed explanations why a price revision was warranted: since the moment of conclusion of the Inventory Contract, the price of EUP had increased more than 17% and the price of UF_6

had increased by about 43%. Tenex explained furthermore that Clause 3.3 was triggered solely by a substantial change in the world uranium market and that changes in the contract prices (cited by Palmco) had no bearing whatsoever.

40. Palmco replied a week later, on November 21, 2003. This time, it alleged that there had only been a 13.3% increase in price from the date of conclusion of the Inventory Contract. Palmco further contended that the market price increase of 13.3% should be reduced by 5.6% (*i.e.* by the amount the contract price increased during the same period). As a result, Palmco alleged that "*a 7.7% price growth difference simply does not justify the implementation of contract Article 3.3*".

41. Tenex replied to that letter on December 19, 2003. According to Tenex, it was so obvious that Palmco was simply avoiding good-faith negotiations by refusing to acknowledge the substantial market change that Tenex decided to continue discussions by offering a specific price to Palmco for the year 2004. It offered a price of USD 979 per kgU and informed Palmco that the latter had until January 15, 2004 to accept the offer.

42. On December 30, 2003, Palmco rejected Tenex's proposal. It also noted that deliveries in 2004 and 2005 were optional and that if Tenex refused to change its price offer KHNP would not exercise its option: "*TENEX' proposed price increase is prohibitive to the exercise by KHNP of this purchase quantity option.*" Tenex did not receive any other reply from Palmco before January 15, 2004.

D. Palmco's failure to exercise the option for the year 2004

43. Under the Inventory Contract, purchases of EUP in 2003-2005 were indeed optional. According to Clauses 2.1.2 and 5.1.2, Palmco could exercise an option to order delivery of EUP by 1 January of the delivery year. Palmco followed this procedure for deliveries in 2003, the first year when the deliveries were optional rather than binding.

44. However, according to Tenex, Palmco did not exercise its option with regard to deliveries in 2004. Tenex's last offer for 2004 was valid until January 15, 2004. Tenex could not extend the time limit further than that, because it had to confirm the order for production of EUP to the relevant authority Minatom and to the production plants designated by Minatom under the established order allocation procedures.

45. After a three-month silence, on April 2, 2004, Tenex received a letter from Palmco stating that "*[i]n accordance with Article 5.1.2 of the EUP Supply Contract ...., Palmco shall exercise an option to order the enriched uranium delivery*". On April 7, 2004, Tenex answered that Palmco had failed to accept Tenex's price offer by January 15, 2004 and that if Palmco sought further implementation of the Inventory Contract, the contract price would need to be revised first. According to Claimant, it was clear from the letter that it dealt with "*further implementation*" of the Inventory Contract, *i.e.* with deliveries in 2005.

46. However, Palmco continued to insist on delivery of EUP in 2004 in accordance with its notice of the exercise of the option dated April 2, 2004. Therefore, on April 15, 2004, Tenex stated that any further negotiations regarding the price for delivery in November 2004 were pointless because Palmco had not exercised its option for 2004. At the same time Tenex informed Palmco that it was "open to discuss the prices for further implementation of the [Inventory] Contract".

47. Palmco, however, continued to ask Tenex to deliver EUP in 2004. In a letter dated April 20, 2004, Palmco stated that it needed EUP since KHNP *"has already elected to exercise its year 2004 EUP purchase option"*. According to Claimant, Palmco acknowledged that it failed to exercise its option but asked Tenex to deliver EUP despite this fact: *"Contract Article 5.1.2 does not preclude TENEX from supplying EUP with late notification should TENEX elect to continue this business"*. In a letter dated April 23, 2004, Tenex replied that it had no obligation to deliver EUP in 2004. Tenex stated that it was nevertheless prepared to negotiate a price revision for future deliveries.

E. The purchase for the year 2005

48. By letter dated December 27, 2004, Palmco informed Tenex that it would exercise its option to order enriched uranium for delivery in 2005 according to an *"estimated delivery schedule"*. In response, by letter dated December 30, 2004, Tenex referred to Clause 3.3 and stated that the Parties had to come to an agreement upon a revision of the Purchase Price.

49. The Parties then corresponded regarding the Purchase Price:

- Tenex pointed out that, by February 2005, prices on the world market had increased by more than 48% since September 2001. Tenex accordingly offered a Purchase Price for 2005 of USD 982/kgU, which represented a 48.8% increase over the Purchase Price for 2001;
- Palmco asserted that the Inventory Contract was *"a fixed price long-term contract"* and refused to accept any obligation under Clause 3.3 to agree to a revision of the Purchase Price. Palmco offered solely to pay USD 739.84/kgU, a mere 2% increase over the 2005 Purchase Price;
- In an effort to reach a compromise, Tenex offered a price of USD 952/kgU, a 3% discount from its previous offer. Palmco refused to change its position.

50. Meanwhile, according to Claimant, uranium prices on the market continued to rise dramatically. By the end of August 2005, the market price for enriched uranium had reached USD 1,485/kgU, a 79% increase over the price when the Inventory Contract was concluded.

51. Moreover, during this time, according to Claimant, Palmco had failed to issue the notice required by Clause 5.1.3 and had accordingly forfeited its right to exercise the option to purchase Enriched Uranium in 2005. Tenex was nonetheless willing, as a gesture of good faith, to supply Enriched Uranium to Palmco. Therefore, in a letter dated September 8, 2005, Tenex offered to sell Enriched Uranium for a revised provisional price that would incorporate the 2% increase offered by Palmco. But Tenex reserved its right to commence an arbitration

in which it would claim a revision of the price. Tenex noted that a reasonable price would be USD 954/kgU incorporating a 20% discount of the market price in the 4th quarter of 2004. According to Tenex, Palmco accepted Tenex's offer by a letter dated September 12, 2005, on the understanding that both Parties' rights in relation to the provisional price were reserved. The Parties then executed Addendum No. 4 to the Inventory Contract. The Addendum amended the Purchase Price for 2005 in Clause 3.1. This amendment expressly stipulated that: "*[t]he indicated price [for 2005] is provisional and subject to a final determination by an arbitral tribunal*". The Parties proceeded with the sale of 15,000 kg of Enriched Uranium. Tenex delivered the Enriched Uranium to Palmco on December 21, 2005.

II. Analysis

A. The claim: the price of the purchase for the year 2005

52. Claimant provided Respondent with Enriched Uranium for the year 2005. Tenex alleges that it has been required to commence this arbitration in view of Palmco's adamant and reiterated refusal to agree to a reasonable revision of the Purchase Price for 2005. It submits that the Arbitral Tribunal can decide on the price adjustment requested by Tenex (1), and that the Purchase Price requested by Tenex for 2005 is reasonable (2).

1. The Arbitral Tribunal can decide on the price adjustment

53. Tenex submits that, under Swedish law, by virtue of Clause 3.3 of the Inventory Contract, Palmco was under an obligation to enter into good faith negotiations with Tenex with regard to the adjustment of the Purchase Price and to agree with Tenex on a reasonable increase, because of the substantial change in the uranium market which occurred at that time.

54. According to Claimant, to decide on the price adjustment, the Arbitral Tribunal is not required to fill any gaps in the Inventory Contract, but rather to interpret it. The Swedish Arbitration Act, Section 1, provides that: "*in addition to interpreting agreements, the filling of gaps in contracts can also be referred to arbitrators*". Therefore, the Swedish Arbitration Act distinguishes between interpretation of contracts and filling of gaps in agreements beyond what follows from their interpretation. In the present case, the Arbitral Tribunal is merely required to interpret Clause 3.3 of the Inventory Contract.

55. Clause 3.3 of the Inventory Contract provides that in case of substantial changes in the world uranium market, either Party shall have the right to approach the other Party with a request to revise the Purchase Price. As explained by Professor Ramberg, Claimant's legal expert, such renegotiation clauses create obligations for the parties to enter into negotiations in good faith. Professor Ramberg notes that if the parties fail to agree, "*it is not possible to leave it there as, in such case, the re-negotiation clause would be much too easy to sidestep by a recalcitrant party*". Professor Ramberg therefore comes to the conclusion that, pursuant to Clause 3.3, "*the Parties are obliged either to agree on a reasonable adaptation of the price when the world uranium market changes substantially or to accept the determination of an adapted price by an arbitral tribunal constituted in accordance with the arbitration clause of the Contract*".

56. Palmco alleges that Clause 3.3 is somehow weaker than a "*traditional*" renegotiation clause because it does not expressly provide that good faith negotiations are to take place after either Party approaches the other Party with a request to revise the price. Palmco speculates that Tenex purposely excluded the requirement that good faith negotiations be entered into from the clause that had been suggested by Palmco. According to Claimant, this statement is wrong:

- first, Tenex did not exclude the requirement that good faith negotiations be entered into from the "*market change*" clause. Tenex did not modify Clause 2.1.3 suggested by Palmco; it deleted it in its entirety and introduced a completely new clause;
- second, Clause 3.3 is by no means weaker than a "*traditional*" renegotiation clause. As explained by Professor Ramberg, the fact that Clause 3.3 does not use the word "*negotiate*" does not make the clause "*weaker*" or more "*toothless*";
- third, Palmco and its legal expert, Professor Nerep, agree that Clause 3.3 requires a Party faced with a request for price revision to negotiate in good faith and that the effect of Clause 3.3 is "*very much the same*" as the effect of a "*traditional*" renegotiation clause.

57. Having admitted that Clause 3.3 requires a Party to negotiate price revisions in good faith, Palmco's expert alleges that this obligation, however, "*does not include a duty to make counterproposals, nor a duty to reach a result and agree on a price revision*". Professor Nerep asserts that the Parties have only a duty to "*consider the other party's proposal in good faith and respond to that proposal in good faith*". Claimant disagrees with that statement. As explained by Professor Ramberg, although a party's duty to enter into negotiations naturally "*could never extend to accept whatever proposal comes forward from the other party.*" But Professor Ramberg adds that "*it would seem to [him] that a party who does not even make a counterproposal could hardly be said to have entered into serious negotiations*".

58. Palmco further alleges that at the time of conclusion of the Inventory Contract, it did not understand that, under Clause 3.3, either Party had "*the right to demand a price adjustment or to impose an obligation on either Party to negotiate and agree to a change in the contract price*" and that Tenex did not communicate to Palmco "*that they intended the clause to create such rights*". According to Claimant, this statement is completely flawed; the meaning of Clause 3.3 and Tenex's understanding of it could not have been unknown to Palmco. Indeed, Tenex did not have any doubts that Palmco understood the clause the same way Tenex did. Palmco knew that, at the initial stage of negotiations, Tenex agreed to substantially reduce the prices and to agree on prices that were 20% lower than prevailing market prices in exchange for introducing in the Inventory Contract a provision that would allow revision of the prices for optional quantities of EUP in the event of substantial changes on the market. Subsequently, when Palmco failed to include this clause in the draft Inventory Contract, Tenex insisted that it be included.

59. Palmco also alleges that the Inventory Contract was in fact a fixed-price contract without any dependence on world uranium prices. It goes on to allege that making such prices contingent on world market prices would "*have rendered meaningless the very purpose of the Inventory Contract*". According to Claimant, these statements are not supported by the wording of

Clause 3.3 and are directly contradicted by the statements Palmco made in connection with the revision of the price for the year 2004. Indeed, for that year, Palmco did not argue that the Inventory Contract provided for fixed prices, but rather claimed that the increase in market prices was not substantial enough to trigger the application of Clause 3.3.

60. According to Claimant, Tenex was entitled to commence negotiations and Palmco was under an obligation to agree to a reasonable revision. However, Palmco refused to negotiate in good faith:

- Palmco's answer on March 1, 2005, when it declared that Tenex's request for a price increase was unreasonable, was clearly in bad faith. Palmco could not deny that the situation in the world uranium market had changed substantially;
- as Palmco could no longer deny that there had been a substantial increase in the uranium market, it started to deny that this change had any bearing on the Inventory Contract because the latter was allegedly a "fixed price long-term contract", whereas this was contradicted by the terms of the Contract and Palmco's previous statements;
- Tenex tried to explain to Palmco that its offer to increase the Purchase Price by only 2% was unreasonable. For instance, Tenex explained that a 2% increase would not even cover Tenex's expenses on feed material purchase. However, Palmco refused to enter into any discussions. It simply denied any "correlation between the market prices and contract prices". Palmco even refused to provide any justification of its offer to increase the price by just 2%.

61. According to Claimant, the fact that Palmco formally participated in the negotiations does not mean that it fulfilled its obligation to negotiate. In reality, according to Claimant, the only explanation for Palmco's uncooperative approach to the price renegotiation may be found in the peculiarity of its relations with KHNP. As can be seen from the wording of Clause 2.1.3 of the Contract for the Supply of Enriched Uranium between KHNP and Palmco, Palmco did not manage to secure for itself in this contract any possibility of revising prices in the event of price increases in the uranium market. Hence, Palmco was unable to negotiate a revision of the price of the Inventory Contract, simply because there were no grounds in the KHNP-Palmco contract on which Palmco could secure for itself an analogous price increase. This is confirmed in Palmco's letter dated March 14, 2005.

62. According to Claimant, the Arbitral Tribunal can decide on the revision of the price in mere application of Clause 3.3 of the Inventory Contract on the basis of the general arbitration clause. The Arbitral Tribunal must find that Palmco breached its obligations under Clause 3.3. The Tribunal should therefore order that Palmco compensate Tenex for this breach by, *inter alia*, determining a reasonable Purchase Price under the Inventory Contract and ordering Palmco to pay Tenex the difference between that price and the price actually paid by Palmco.

63. In any event, Tenex alleges that, even if the arbitration clause of the Inventory Contract does not authorise the Arbitral Tribunal to revise the price, Palmco, by executing Addendum No. 4, which states that the price specified therein "*is subject to a final adjustment by an arbitral tribunal*", accepted the power of the Arbitral Tribunal to determine the EUP price for 2005.

2. The purchase price that Tenex requested for 2005 was reasonable

64. The price provisionally fixed by the Parties at the time of the Addendum No. 4 was only 2% higher than the Contract price. However, in September 2005, world market prices for EUP had increased 80.6% since the Inventory Contract (USD 821.89/kgU in 2001 compared to USD 1484.63/kgU in August 2005). The Purchase Price requested by Tenex was 35.7% below world market prices for EUP (USD 954/kgU compared to USD 1484.63/kgU).

65. Therefore, Claimant alleges that the Purchase Price Tenex offered Palmco was more than reasonable. The Arbitral Tribunal is thus fully entitled to order Palmco to pay Tenex the difference between the Purchase Price offered by Tenex and the price actually paid by Palmco for EUP delivered by Tenex in 2005.

B. The counterclaim: Tenex did not breach the Inventory Contract for the year 2004

66. According to Respondent, Tenex breached its supply obligations for 2004. Tenex's purported unjustified refusal to make deliveries in 2004 caused Palmco to incur significant damages. According to Claimant, Respondent's counterclaim relating to the year 2004 should be dismissed (3) since the absence of any delivery of Enriched Uranium to Palmco for the year 2004 is due to Palmco's failure to negotiate the revision of the prices in good faith (1) and Palmco's failure to exercise its option (2).

1. Palmco failed to negotiate the revision of the price in good faith for the year 2004

67. According to Claimant, in autumn 2003, it was widely accepted in the nuclear industry that the situation on the market had substantially changed. This is explained by Mr. Jeff Combs, a leading expert in the nuclear industry and President of Ux Consulting Company, in his Expert Opinion. Claimant could thus invoke Clause 3.3 of the Inventory Contract.

68. As underlined above in the summary of Claimant's arguments regarding the claim, according to Claimant, Clause 3.3 of the Inventory Contract obliged Palmco to enter into good faith negotiations and to agree on a price revision in case of substantial changes in the uranium market. Claimant alleges that such a change occurred for the year 2004. However, according to Claimant, Palmco failed to negotiate the revision of the price in good faith.

69. According to Claimant, Palmco's bad faith is illustrated by various elements:

- Palmco deliberately ignored the clear fact that there was substantial increase in uranium market prices, alleging that the increase was solely of 9% or 13.3%;
- in the same "bad faith line", Palmco asserted that for purposes of determining whether there was a substantial change of the situation on the market, the market price increase should be reduced by the contract price increase over the same period;
- when Tenex offered Palmco a price for deliveries in 2004, Palmco rejected it without any explanation other than the unsubstantiated statement that it was excessive.

70. Palmco asserts that the Inventory Contract provided for the delivery of "*lower grade*" EUP and that because of this alleged fact the price indicators referred to by Tenex during the negotiations could not apply to EUP delivered under the Inventory Contract. According to Claimant, this statement is factually wrong. The requirements applicable to EUP are set out in Clause 5.3, which provides for absolutely standard EUP. This is even confirmed by Palmco's own expert witness.

71. Palmco further alleges that in the letter dated December 30, 2003, it promptly responded to Tenex's price proposal and made clear its willingness to hear Tenex's position. According to Claimant, this is not correct. In that letter, Palmco said that Tenex's price was excessive and that KHNP would not exercise the option unless the price was reduced. Palmco did not indicate at what price it would be prepared to buy EUP.

72. According to Claimant, Professor Ramberg confirms that a party who does not even make a counterproposal could hardly be said to have entered into serious negotiations. Moreover, Claimant alleges that Palmco did not even satisfy the good faith test suggested by Professor Nerep, *i.e.* that Palmco had a duty "*to consider the other party's proposal in good faith and respond to that proposal in good faith*". According to Claimant, Palmco did not meet the conditions of this test:

- it did not acknowledge the increase of price indicators;
- it did not explain why it disregarded Tenex's objection that, for the purposes of Clause 3.3, the contract price increase should not be deducted from the market price increase;
- it wrongfully alleged that the Inventory Contract EUP was of lower quality.

73. According to Claimant, to cloud the clear breach of its obligation to negotiate in good faith, Palmco alleges that Tenex's request for revision of the price was aimed at undermining Palmco's relationship with KHNP. Palmco also speculates that Tenex's request to revise the price was somehow tainted by the fact that it was made for the first time just days after negotiations had stalled among Tenex, KHNP and Palmco regarding assignment of Palmco's contracts with KHNP to Tenex.

74. According to Claimant, these allegations are groundless. Palmco voluntarily entered into discussions with KHNP and Tenex. Tenex did not use its request for a price increase as a means to somehow coerce Palmco into assigning its contracts. Tenex's request was made in October 2003 for the first time because the extent of the increase in market prices and industry prospects became clear only at that point.

75. Palmco also refers to various speculations contained in Mr. Lee's witness statement. According to Claimant, these allegations are wrong as explained in Mr. Pluzhnik's witness statement. In this respect, it is incorrect to allege that Tenex was trying to sell directly to KHNP the same 16 metric tons of EUP that Palmco did not buy in 2004.

76. Tenex also disputes Palmco's allegation that it rejected Tenex's price proposal of December 19, 2003 because this proposal "*[ignored] that Palmco's contract with KHNP was for a fixed*

price with no provision entitling Palmco to request a price increase, but, as Tenex undoubtedly knew, Palmco's limited margin would not allow it to agree to such a significant increase. The price under the Palmco-KHNP contract for 2004 was USD 805.00. If Palmco had accepted TENEX's proposed price for 2004, Palmco would have suffered a loss of approximately USD 2,784,000."

77. According to Claimant, this statement is false:

- Tenex did not know that Palmco was not entitled to request a price increase from KHNP and did not know the prices under the Palmco-KHNP contract;
- Palmco did not provide this information in the course of the correspondence;
- it is unclear what relevance this information may have;
- Palmco was solely responsible for the fact that it did not have the same rights to request revision of the prices from KHNP as Tenex had under the Inventory Contract. In this respect, although the MOU provided that Palmco should negotiate with KHNP on the basis of the MOU and Tenex's price offers, Palmco failed to do this. Thus, Palmco intentionally assumed the risk of potential price increases, and Tenex should not be liable for that.

2. Palmco failed to exercise the option

78. According to Claimant, there can be no doubts that Palmco did not engage in good faith negotiations. Moreover, it is Claimant's position that Palmco failed to exercise the option for delivery of EUP in 2004 and that, therefore, Tenex was not obliged to deliver EUP to Palmco in 2004.

79. Pursuant to Clause 2.1.2 of the Inventory Contract, *"[f]or the quantities to be Delivered in Delivery Years 2003-2005, Buyer has an option to order delivery according to the Article 5.1.2"*. And pursuant to article 5.1.2, *"[f]or the Delivery Years 2003-2005, the Buyer shall notify the Supplier before the 1st of January of each Delivery Year of his intention to exercise an option to order the Enriched Uranium. In case Buyer decides to exercise the option and to order the quantities of Enriched Uranium stipulated in Clause 2.1.1, the Supplier has the obligation to Deliver the notified quantities of Enriched Uranium..."*.

80. According to Claimant, Palmco had to exercise the option to order delivery in 2004 by January 1, 2004. Tenex extended this time limit to January 15, 2004. However, Palmco only sent its notice on April 2, 2004.

81. Palmco alleges that, pursuant to Clause 5.1.2, it only had to notify Tenex of its *intention* to exercise the option. According to Claimant, this interpretation does not follow from Clauses 2.1.2 and 5.1.2. It follows from these clauses that Palmco had an option and that by 1st January, it had to notify Tenex of its *"intention to exercise the option"*. While the word *"intention"* might create some uncertainty as to the content of the notification, the very next sentence of Clause 5.1.2 precludes any misinterpretation: Palmco is to notify Tenex that it

"decides to exercise the option and to order" EUP, *i.e.* that Palmco's notice to Tenex is binding. Once the option is exercised, Tenex becomes obliged to deliver EUP to Palmco. It would be absurd to suggest that a non-binding notice of an "*intention to exercise*" the option could create any obligations for Tenex.

82. Moreover, there was an established practice between the parties regarding the exercise of the option - that a notice of the exercise of the option was to be sent by Palmco prior to 1 January of the delivery year. And under Article 9 of the UN Convention on the International Sale of Goods ("CISG"), the parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.

83. Furthermore, even if Tenex's knowledge of Palmco's intent to exercise the option for 2004 was sufficient for the purpose of Clause 5.1.2, which Claimant denies, Claimant alleges that it did not have such knowledge. On December 30, 2003, Tenex received a letter from Palmco stating that purchases of EUP in 2004 and 2005 were optional and not firm and that unless Tenex reduced the prices for EUP, KHNP would not exercise its option. Since KHNP was the ultimate purchaser of the EUP, Tenex had all grounds to believe that Palmco would not exercise its option.

84. Contrary to Respondent's allegation, Palmco's option was only sent in a letter dated April 2, 2004. This letter clearly states that it constitutes such a notice. It was confirmed in Palmco's letter of April 8, 2004. In a letter dated April 20, 2004, Palmco even admitted that its notice of the exercise of the option was made belatedly.

85. Palmco finally alleges that under Article 71 CISG, it was entitled to suspend performance of "*its obligation to provide notice under article 5.1.2*" in light of Tenex's statements that it would not deliver any EUP until Palmco entered into good faith negotiations on revision on the price. According to Claimant, this statement is wrong. As confirmed by Professor Ramberg, Palmco had the right, rather than the obligation, to provide notice of the exercise of the option. Therefore, Article 71 CISG is not applicable to this situation. In any event, Article 71.3 CISG requires a party suspending performance to give immediate notice of the suspension. Such notice was not given by Palmco.

86. Finally, Palmco claims to have "*learned facts that laid bare the true motivation behind Tenex's tactics*". According to Palmco, "*Tenex had, unbeknownst to Palmco, arranged a direct meeting between itself and KHNP on April 27, 2004*". Palmco alleges that Tenex offered to sell to KHNP "*the same quantities and specifications of EUP as Tenex was obliged to supply to Palmco at the same below-market prices that Palmco had, with Tenex's knowledge, committed to KHNP for the years 2004 and 2005*".

87. According to Claimant, these allegations are false. Palmco wrongly implies that a "*direct meeting*" between Tenex and KHNP, without notice to Palmco, was somehow illicit or improper. In fact, Tenex has had direct contractual relations with KHNP (or its predecessor KEPCO) since 1993, when Tenex concluded a contract for uranium enrichment services with KEPCO. In late April 2004, representatives of Tenex participated in the annual Korean

Atomic Industrial Forum in Seoul. There, they naturally met representatives of KHNP. They discussed the situation regarding deliveries of EUP to Palmco, but KHNP did not request and Tenex did not offer a direct delivery of EUP in 2004.

88. According to Claimant, Respondent thus failed to exercise the option for delivery of EUP in 2004, and, therefore, Tenex was not obliged to deliver EUP to Palmco in 2004.

3. Conclusion

89. According to Claimant, Palmco breached its duty to negotiate a new price in good faith. As this breach was material, under Article 71 CISG and Swedish law, Tenex had the choice between two options: it could either rescind the contract and claim damages or stay with the contract and claim damages.

90. According to Claimant, Tenex did not breach the Inventory Contract. Therefore, Palmco's counterclaim should be rejected. Moreover, even if Tenex was in breach of the Inventory Contract, Palmco's prayers for relief should nevertheless fail for the following reasons.

91. Palmco's claim for specific performance – to order Tenex to deliver Palmco 16 metric tons of EUP – constitutes a new claim and should not be allowed pursuant to the combination of Section 23 of the Swedish Arbitration Act and Article 22 of the SCC Rules. Pursuant to Section 23 para. 2 of the Swedish Arbitration Act, new claims can be made under some conditions. However, Section 23 para. 3 provides that this provision shall not apply where the parties have decided otherwise. In this case, the parties have agreed to apply the SCC Rules. These Rules allow only amendments of the claim and not the introduction of new claims. Therefore, according to Claimant, Palmco's new claim for specific performance should be dismissed. Moreover, even if the SCC Rules allowed the introduction of a new claim, this new claim could still not be accepted because it was made belatedly, *i.e.* one-and-a-half month before the final hearing. Finally, Claimant alleges that, in any case, it cannot be ordered to deliver these quantities of EUP at the prices stipulated in the Inventory Contract because of the substantial changes in the market.

92. According to Claimant, Palmco's claim for lost profit should equally fail because Tenex did not breach the Inventory Contract. Moreover, Palmco could not earn the profit it is claiming because it was under a duty to renegotiate the price under the Inventory Contract and was not entitled to receive EUP at the prices stipulated in the contract.

93. Along the same line, Palmco's request that Tenex be condemned to indemnify Palmco for any late delivery penalties or costs of purchasing replacement goods that Palmco is liable to pay to KHNP, should be dismissed since Tenex did not breach the Inventory Contract. Moreover, the Arbitral Tribunal cannot, in any event, make such a broad and indefinite declaration of Tenex's liability. Even if Tenex were in breach of the Inventory Contract, which Claimant denies, Tenex cannot be responsible for all amounts that Palmco may be ordered to pay. For example, Tenex cannot be liable for damages that Palmco could have mitigated. Each particular claim should be considered separately if and when Palmco is ordered to pay such

amounts. Therefore, Palmco's claim for indemnity declaration should be dismissed in its entirety.

94. As no amounts should be awarded, Palmco's request for interest on such amounts must fail, and Palmco should bear the full amount of the arbitration costs.

Section II. The position of Respondent

I. The facts

A. General background

95. According to Respondent, Tenex has been able to have a South Korean market for Russian uranium thanks to Palmco at a time when there were no direct commercial dealings between South Korea and the then Soviet Union. In exchange for obtaining this unprecedented market access, Tenex committed to sell to Palmco substantial quantities of Tenex's uranium at established prices, which in turn allowed Palmco to commit to sell corresponding quantities of EUP to KEPCO and KHNP at corresponding, established prices.

96. For 14 years, the relationship functioned well. However, in or about the middle of 2002, Tenex came under the control of a new management whose goal was, and continues to be, the elimination, by all means, of all intermediaries through which Tenex has traditionally exported Russian uranium. In this context, Tenex has engaged in a series of escalating contractual breaches intended to prevent Palmco from performing its obligations to KEPCO and KHNP and, thereby, to induce KEPCO and KHNP to terminate and abandon their contracts with Palmco.

97. According to Respondent, at the very time that Tenex was assuring Palmco it would remain Tenex's agent in South Korea, Tenex was entering into a series of agreements with other potential agents in South Korea. One of these persons, one Christopher Park, an American entrepreneur with extensive contacts in South Korea, has even admitted to Palmco that Tenex had entered into an agreement with him to make use of all resources at his disposal to discredit Palmco with KHNP, and had promised him commissions and fees on any contracts that he would be able to facilitate directly between Tenex and KHNP.

98. According to Respondent, Tenex's unjustified demand for a price increase for its 2005 shipment under the Inventory Contract is but one link in a long chain of misconduct by Tenex. Even that narrow incident can only be interpreted in the context of Tenex's refusal a year earlier to make any shipment under the Inventory Contract for the year 2004 – a breach that caused Palmco damages in excess of USD 10 million and that forms the basis of the counterclaim.

99. According to Respondent, Tenex's breaches of the Inventory Contract are thus but a part of the steps that Tenex has taken to undercut Palmco's business and which have caused Palmco millions of dollars in damages. According to Respondent, although several of those related

breaches are the subject matter of separate arbitration proceedings, they supply a valuable context for understanding Tenex's true motivation in breaching the Inventory Contract.

100. These various breaches include the following:

- in 2003, Tenex, in bad faith and without justification, terminated Palmco as its representative under the Agency Agreement, by refusing to pay the representation fees to which Palmco was entitled for the year 2004, and by anticipatorily repudiating any obligation to pay Palmco its representation fees for 2005;
- in January 2004, Tenex refused, in bad faith and without justification, to perform its obligation under a contract called the Uranium Concentrates Supply Contract. Specifically, under this contract, Tenex was obligated, *inter alia*, to transfer to Palmco the title to certain uranium concentrates in or about January 2004, and Tenex knew that such transfer was required in order for Palmco to transfer title to said concentrates to KHNP. However, Tenex refused to provide timely documentation. Due to Tenex's delay, Palmco incurred significant penalties and suffered further erosion of its goodwill with KHNP;
- in March 2004, Tenex refused to perform its obligations under yet another contract, the Conversion Services Contract. Specifically, Tenex was obligated, after performing the requisite conversion services on U_3O_8, to transfer to Palmco certain corresponding quantities of natural UF_6 in March 2004. Tenex knew that such transfer was required in order for Palmco to transfer said natural UF_6 to KHNP pursuant to Palmco's contract with KHNP. However, Tenex refused to make timely transfer of the requisite UF_6, as required. Due to Tenex's delay, Palmco incurred significant penalties and suffered further erosion of its goodwill with KHNP;
- finally, Tenex breached the Main Contract. In December 2004, Tenex began to perform its obligations with delays. As a result of these delays, Palmco suffered the further erosion of its relationship with KEPCO and KHNP, as well as the allegation by KHNP that Palmco is liable for significant damages and penalties. Shortly after, Tenex refused to honor Palmco's option under the Main Contract to purchase up to 100 metric tons of EUP *per annum* at set prices. Tenex has acknowledged that its refusal to honor Palmco's option will prevent Palmco from performing its obligation to KHNP, and will thereby expose Palmco to millions of dollars in liability to KHNP – which Tenex recognizes would likely put Palmco out of business.

B. Negotiations regarding Clause 3.3 of the Inventory Contract

101. The Inventory Contract, which is at issue in the present arbitration, came as the answer to KHNP's invitation to tender. According to Respondent, upon receipt of KHNP's invitation to tender, Palmco sent a copy directly to Tenex. At the beginning, it was clear that KHNP would commit to firm quantities only for the first year (2001), the quantities for the remaining four years (2002-2005) being optional. Then 2002 became a further year of firm purchases. According to Respondent, KHNP also made clear that "*[t]he tender price shall be firm and fixed without price adjustment for the entire duration of the contract*".

102. Tenex responded to KHNP's invitation to tender by proposing to Palmco two different price options, depending on the level of U-236 in the EUP. Given that KHNP was to use the EUP

supplied under the new contract for inventory purposes rather than current production, Palmco explained to Tenex that KHNP was likely to select the bid for the lowest price. In response, Tenex agreed to lower the price of EUP even more. In addition, Tenex proposed as a possible contract term that "*[i]f substantial changes in the market situation take place, both parties shall have the right to propose to review the prices for years 2002-2005*". The Parties, however, never discussed that proposal, and it never became part of their agreement.

103. After reaching an agreement with Tenex on the fixed prices that Tenex would offer, Palmco sent a proposal to KHNP for the new EUP supply contract. In light of the reduced pricing, the Tenex-Palmco bid was successful. Palmco immediately began negotiating the specific terms of the new supply contract between Palmco and KHNP, and drafted a proposed parallel contract between Tenex and Palmco. Palmco and Tenex thereafter proceeded to negotiate the details of the new Tenex-Palmco supply agreement.

104. According to Respondent, during the course of its discussions with KHNP, Palmco grew concerned about a decreasing trend in the market price of EUP. Since the contract was for a fixed price and the 2003-2005 quantities were optional, it was clear that KHNP would not purchase EUP in those years if the market price fell below the contract price. Accordingly, Palmco included a provision in its contract with KHNP providing that, in the event KHNP decided not to exercise its option due to a substantial difference between the market price and the contract price, Palmco had the right to offer KHNP an alternative lower price within the terms of the existing contract. This provision allowed Palmco to secure additional orders with lower pricing without KHNP having to issue a new invitation to tender and, subsequently, requiring the negotiation of an entirely new EUP supply contract.

105. Palmco concluded negotiations of its EUP supply contract with KHNP on July 13, 2001. Palmco further sought the insertion in the contract between Palmco and Tenex of a provision providing an option to request an alternative price offer. Palmco's proposed clause did not impose any obligation on either Palmco or Tenex to accept a revised price.

106. According to Respondent, initially, Tenex made no comment on Palmco's proposed clause. Then, on July 23, 2001, Tenex sent a revised version of the draft contract which included additional changes proposed by Tenex. In that version, Tenex proposed instead that both Palmco and Tenex be accorded "*the right to approach the other Party with a request to revise the Purchase Prices*" set forth in the contract, nothing more.

107. According to Respondent, in changing Palmco's proposed clause, Tenex therefore eliminated any requirement that the Parties enter into negotiations for a price revision. Moreover, Tenex's proposed clause did not establish any procedure for a price renegotiation nor did it provide for determining the result should one Party decline to accept the other Party's proposed price adjustment.

108. According to Respondent, Palmco did not understand the clause to grant either Party the right to demand a price adjustment or to impose an obligation on either Party to negotiate and agree to a change in the contract price.

C. Discussions between the Parties regarding revision of the contract price for the year 2004

109. According to Respondent, in 2004, Tenex suddenly asserted that changes in the market price of EUP entitled Tenex to a dramatic increase for the 2004 deliveries. As a threshold matter, Palmco questioned whether the change in market prices had been "*substantial*" as necessary for Clause 3.3 to apply. Palmco also noted that the Inventory Contract was negotiated specifically to provide below-market pricing. To that end, it even called for a lower grade EUP, or uranium with a higher content of U-236, than the EUP to which the spot market price applied.

110. According to Respondent, Tenex did not even respond to Palmco for over a month. When it did respond, Tenex disputed Palmco's calculations of the change in market price, insisting that the market price had increased by 17 percent since the date of the Contract. Notably, however, Tenex had taken no account of the fact that, pursuant to the Inventory Contract's own price escalation provisions, the contract price itself had increased by six percent.

111. Tenex also accused Palmco of failing to negotiate in good faith. But Respondent points out that Tenex's refusal to make its 2004 deliveries came just one day after Tenex unjustifiably terminated Palmco as its representative under the Agency Agreement to the Enrichment Services Contract.

112. Subsequently, on December 19, 2003, Tenex proposed a specific price for the 2004 delivery – USD 979/kgU – a 38 percent increase from the 2004 contract price of USD 711.11. According to Respondent, in so doing, Tenex emphasized that it would not be prepared to implement the Inventory Contract until the Parties revised the prices. Palmco concluded that Tenex's proposal was unreasonable and made in bad faith.

113. According to Respondent, despite Palmco's belief that the market increase did not entitle Tenex to seek a price increase in late December 2003, Palmco made clear its willingness to continue discussions. Tenex failed to respond over three months, and the reason for its silence soon became apparent in light of surrounding events: according to Respondent, at the very time that Tenex was refusing to respond to Palmco, it was engaging in further efforts to convince KHNP to abandon its contract with Palmco. Then, in early 2004, Tenex embarked upon a series of breaches of the Parties' other contracts in order to undermine Palmco's relationship with KHNP.

D. Palmco's option for the year 2004

114. According to Respondent, in light of these circumstances, Palmco decided to provide Tenex with the specific details of its EUP order under the Inventory Contract for 2004, including the quantity, specifications, and delivery months. Thus, by letter dated April 2, 2004, Palmco confirmed what Tenex undoubtedly already knew: Palmco expected Tenex to deliver EUP under the Inventory Contract in 2004.

115. In response to Palmco's letter, Tenex again reiterated that it would not implement the Contract unless the Parties agreed upon a new price. Then, on April 15, 2004, Tenex suddenly introduced a new pretext as to why it would not make the 2004 EUP delivery. Ignoring the fact that the Parties had been engaged in months of discussions regarding the terms for the deliveries in 2004, and that Tenex itself had challenged Palmco's right to make purchases at the contract price, Tenex asserted that Palmco had failed to give timely notice of its intent to purchase EUP in 2004 prior to January 1, 2004.

E. The purchase for the year 2005

116. Respondent points out that, only months after repudiating its supply obligations for 2004, Tenex made clear that it would maintain the same position for 2005. After Palmco formally exercised its purchase option for the 2005 delivery year, Tenex once again refused to make the delivery unless Palmco first agreed to a price increase.

117. Palmco explained why it could not accept Tenex's proposal, and notably the fact that Palmco had no right to obtain a price increase from KHNP. As Tenex already knew, Tenex's proposed price would have caused Palmco to suffer debilitating losses.

118. However, Respondent feared that, as in 2004, Tenex would refuse to make the 2005 delivery unless Palmco acceded to some price adjustment. To avoid being forced into default again, Palmco offered Tenex what it could, given the limitations it faced – a two-percent increase.

119. Tenex refused to accept Palmco's proposed price increase for almost four months. It finally changed tactics and claimed that it was forced to accept Palmco's unjustified 2% price increase proposal.

120. Then, according to Respondent, despite two requests from Palmco urging Tenex to send an executed addendum reflecting the new price as soon as possible, Tenex said nothing for over a month. When Tenex finally did respond to Palmco on August 15, 2005, it did not provide the requested addendum. Instead, Tenex attempted to resort to a new expedient to justify a refusal to deliver in 2005 – namely, Palmco's purported failure to notify Tenex of the final delivery month, quantity and assay before July 31, 2005, in accordance with Article 5 of the Inventory Contract.

121. According to Respondent, by late 2005, Tenex recognized that such pretexts were unavailing. On September 8, 2005, Tenex ultimately sent Palmco an executed addendum. However, Tenex inserted in it a clause providing that Tenex reserved its legal rights to commence an arbitration to claim a further revision of the price for the 2005 delivery, and that the agreed price was provisional and subject to final determination by an arbitral tribunal.

122. Respondent alleges that, given the time limitations and Palmco's fear of further delays or even non-delivery, it was forced to execute Addendum No. 4 without discussion. In so doing, however, Palmco wrote a letter to Tenex in which it reserved its own rights to dispute Tenex's right to any increase in price and to seek reimbursement for the two-percent price increase.

123. According to Respondent, Claimant now claims that in signing Addendum No. 4, Palmco accepted the power of the Arbitral Tribunal to determine the EUP price for 2005. Respondent alleges that it did not do such a thing. In executing Addendum No. 4, Palmco agreed that both Parties were reserving their respective rights on the legal issues surrounding the adjusted price. Having disputed Tenex's right to a price increase from the beginning of the Parties' discussions, Palmco could not – and did not – agree to empower the arbitrators to impose an even higher price over and above the adjusted price to which Palmco had been forced to agree.

II. Analysis

A. The claim: the price of the purchase for the year 2005

124. According to Respondent, the Arbitral Tribunal cannot decide on the price adjustment requested by Tenex for the year 2005 (1). In any case, the Purchase Price requested by Tenex for 2005 is not reasonable (2). Therefore, Claimant's claim should be dismissed.

1. The Arbitral Tribunal cannot decide on the price adjustment

125. According to Respondent, under Swedish law, an arbitral tribunal shall not fill gaps in an agreement between the parties unless the parties have conferred on the tribunal a mandate to do so. Respondent submits that the Parties have not, in either the Inventory Contract, Addendum No. 4 to the Inventory Contract, or in any other document, conferred such authority upon the Arbitral Tribunal.

126. In 2005, Tenex asserted that it had a right to a price increase under Clause 3.3. According to Respondent, Tenex's reliance on Clause 3.3 was and is hopelessly misplaced. Tenex ignores the plain and unambiguous language of Clause 3.3 itself: by its express terms, this provision does not provide a right to a price adjustment. It only gives each Party the right to approach the other to request a price adjustment but without imposing any obligation on the other to agree to revised terms.

127. According to Respondent, this clause is even weaker than the renegotiation clause contained in the draft that Palmco had initially proposed to Tenex. And a similar point can be made with reference to the Parties' Main Contract.

128. Moreover, there is no evidence that Tenex ever informed Palmco that it understood the legal effect of Clause 3.3 to be any different from what the plain language of the clause clearly provides, nor is there any evidence that Palmco was aware of any other background, facts or circumstances that would have suggested an intent by Tenex to adopt a more robust price-adjustment provision. To the contrary, Palmco could never have reasonably expected that Tenex intended Clause 3.3 to give Tenex a right to demand a price increase when Tenex knew that Palmco's own contract with KHNP gave Palmco no right to obtain a price increase from KHNP.

129. According to Respondent, under the canons of contract interpretation set forth in Article 8 of the CISG, which has been adopted by Sweden and which is therefore applicable to the Inventory Contract, Clause 3.3 must be interpreted according to the understanding that a reasonable person in Palmco's position would have had in the same circumstances.

130. According to Respondent, Clause 3.3 merely gave either Party the right to approach the other Party to request a price adjustment and, consistent with the general requirement of good faith under the CISG and Swedish contract law, it required the other Party to consider such a request and to respond in good faith.

131. Respondent further alleges that the outcome would be very much the same even if Clause 3.3 had been a traditional "renegotiation clause". Under Swedish law, it is well established that, unless a renegotiation clause provides an express exit mechanism – *i.e.* some provision that dictates what will happen in the event of an impasse between the parties – a renegotiation clause gives the dissatisfied party few, if any, enforceable rights. Tenex's legal expert himself summarizes this position in a book. And other leading commentators on Swedish contract law unanimously endorse this view.

132. According to Respondent, Tenex itself is well aware of the distinction between renegotiation clauses that have effective and enforceable exit mechanisms and those that do not. This appears in the direct supply contract Tenex entered into with KHNP in December 2004, in which the renegotiation clause provided for the termination of the agreement in the absence of an agreement of the parties.

133. Respondent further points out that the fact that the Inventory Contract has a general arbitration provision does not change the analysis. The effect of Clause 13.2 is to require disputes arising between the Parties regarding the Inventory Contract to be submitted to arbitration. However, this general jurisdictional mandate cannot be equated with the power to impose contract terms on which the Parties themselves never agreed, or the power to revise the terms of the Parties' original agreement when the Parties' own discussion leads to an impasse. The latter power would constitute a mandate to serve as an *amiable compositeur*, which has not been given to the Arbitral Tribunal.

134. According to Respondent, in assessing the competence of the Tribunal to order the relief requested in Tenex's claim, the only real question is whether Addendum No. 4 somehow provided the exit mechanism that Clause 3.3 lacks. Tenex argues that Addendum No. 4 did just that – *i.e.*, Tenex claims that the provision in Addendum No. 4 stating that *"[t]he indicated price is provisional and is subject to a final determination by an arbitral tribunal"* provided a mandate to seek an arbitral redetermination of the price over and above the price increase to which the Parties mutually agreed.

135. According to Respondent, this is an exercise in contractual interpretation and, under Swedish contract law, the fundamental rule is to enforce the common intentions of the parties. If the wording of a written agreement can be shown not to accurately reflect the parties' shared

intent, the common intent is decisive and the wording will be set aside. And pursuant to Article 8 (3) of the CISG, an assessment of this common intent requires that due consideration be given to all relevant circumstances, including the parties' negotiations. Similarly, under the traditional Swedish concepts *fri bevisföring* and *fri bevisprövning*, there are no restrictions on the evidence that a party may introduce to establish the contractual intent.

136. In this respect, Respondent alleges that Tenex's attempted application of Addendum No. 4 is entirely inconsistent with facts surrounding its execution. For the most part, those facts are not in dispute:

- Tenex refused to make delivery for the year 2005 unless Palmco first agreed to a price increase;
- Palmco responded that Clause 3.3 did not mandate the price increase that Tenex was demanding;
- Tenex made two proposals;
- fearing that, unless Palmco offered some form of price adjustment, Tenex would simply refuse to perform, Palmco offered Tenex a two-percent price increase;
- almost four months later, Tenex informed Palmco that Tenex was forced to accept Palmco's unjustified proposal. Tenex further indicated that it proposed to fix a new contract price in an addendum;
- Tenex delayed several months before sending the Addendum. On 8 September 2005, Tenex finally sent the Addendum, just two months before KHNP required the scheduled delivery. In the Addendum, which it drafted without consultation with Palmco, Tenex inserted a provision stating that the two-percent price increase to which the Parties had earlier agreed was in fact provisional and subject to final determination by an arbitral tribunal;
- given the severe time constraints and its fear that Tenex would further delay or refuse to perform, Palmco was forced to execute Addendum No. 4 without further discussion. However, in its cover letter, Palmco made clear that it was signing the Addendum under a complete reservation of rights and that it viewed Tenex as having breached the Contract;
- Tenex never disputed Palmco's reservation of rights and the delivery was made according to schedule.

137. According to Respondent, the facts leading to the execution of Addendum No. 4 make it clear that the Parties never had a shared intent to delegate the task of revising the 2005 purchase price to an arbitral tribunal. Long before Palmco was ever presented with Addendum No. 4, Tenex had agreed in writing to the two-percent increase proposed by Palmco. Although Tenex's agreement was grudging, Tenex gave no hint that its agreement was somehow qualified by a reservation of rights to seek an even larger price adjustment through arbitration. Indeed, at the same time that it accepted Palmco's offer, Tenex committed to embodying the new price term in an addendum. At this point, Tenex was already bound to supply the 2005 EUP in exchange for the increased price to which the Parties had agreed; it was not at liberty to renege on this commitment or to unilaterally modify the Parties' bargain.

138. According to Palmco, unfortunately, Tenex tried to do just that with Addendum No. 4. Palmco concluded that it had no other choice but to sign the Addendum. Nevertheless, in its transmittal letter with the signed Addendum, Palmco made it clear that it reserved its rights on the Addendum.

139. Therefore, Respondent alleges that, under these circumstances, it defies credulity to suggest that Palmco would have voluntarily given Tenex a two-percent increase while also agreeing to refer the question of some additional (and unpredictable) price increase to the equitable discretion of an arbitral tribunal. And to the extent that there was any shared intent with regard to the arbitration provision of Addendum No. 4, that intent was limited to reaffirming that an arbitral tribunal rather than a national court would ultimately have jurisdiction on pertinent disputes.

2. The purchase price that Tenex requested for 2005 was not reasonable

140. Respondent further alleges that, even assuming – solely for the sake of argument – that the Parties had a common intent in Addendum No. 4 to refer the pricing of Tenex's 2005 deliveries to the equitable discretion of arbitrators, the Tribunal should deny Tenex's claim in its entirety on the merits, because, contrary to Tenex's assertions, the balance of equities clearly tips in favor of Palmco.

141. First, Palmco is an intermediary with a fixed profit margin. When the market prices for EUP began to rise in 2004 and continued to rise in 2005, Palmco did not benefit in any way.

142. Second, Palmco considered Tenex's request for a price increase for 2005 in good faith and ultimately agreed to a modest price adjustment consistent with what Palmco could reasonably do to preserve some meaningful portion of its profits.

143. Third, it is simply not credible that Tenex lost money on the 2005 delivery, much less that the agreed price increase was insufficient to cover Tenex's cost of feed material. Tenex's actual cost of feed material in 2005 was in the order of USD 399.56 per kg of EUP, compared to the adjusted contract price of USD 739.84. What is more, the total cost of EUP was approximately USD 648.79. With this cost structure, Tenex had ample room for a reasonable profit.

144. Fourth, Tenex attempts to obscure these facts by confusing the concepts of market price with Tenex's own actual costs. However, while it is true that the world spot market price rose significantly in the 2004-2005 time period, that rise was caused primarily by supply interrupting events in certain parts of the world that had little, if any, effect on uranium supplies or the cost of enrichment in Russia. Russian mining entities and enrichment plants continued to be able to supply affiliates like Tenex at costs comparable to those in prior years, and in doing so, they themselves realized significant internal profits.

145. Fifth, if Tenex were successful in its claim for a further adjustment of the 2005 contract price, the outcome would be grossly one-sided. Tenex's own profits under the Inventory Contract

would expand dramatically, whereas Palmco would actually be forced into a net loss of approximately USD 1,875,000.

146. Sixth, Tenex's only response on these issues is to assert that it should be entitled to raise the price for its 2005 deliveries to the 2005 market price, minus the same purported percentage of discount that Tenex had given Palmco in 2001. The fact that Palmco did not retain a similar right to adjust its prices with KHNP would be none of Tenex's concern. According to Respondent, Tenex's position is circular in the extreme. At the bottom, it assumes that Tenex has some sort of equitable entitlement to have its contract price indexed to the actual market price of EUP, with an adjustment to preserve the discount rate that was built into the contract at its inception. The problem is that nothing gives Tenex that right, nor could any such right have been given consistent with KHNP's insistence on a fixed contract price without the possibility of price adjustment.

147. Consequently, according to Respondent, in the event that the Arbitral Tribunal finds itself authorized to determine the Purchase Price for 2005, the price should be fixed at an amount equal to that provided in Addendum No. 4, since that price, in view of the circumstances at hand, is fair, reasonable, and balanced. In the event that the Arbitral Tribunal determines that the price exceeds the price of Addendum No. 4, Respondent requests the Arbitral Tribunal to order Palmco to pay Tenex only such amount as equals the difference between what Palmco has already paid and the amount of the Arbitral Tribunal's re-determined Purchase Price.

B. The counterclaim: Tenex breached the Inventory Contract for the year 2004

148. According to Respondent, Tenex breached its supply obligations for 2004. Tenex's unjustified refusal to make deliveries in 2004 caused Palmco to incur significant damages, which must be repaired (3). Contrary to Claimant's allegation, Respondent contends that it did neither breach the Inventory Contract with respect to the price revision (1) nor with respect to the notification requirements (2).

1. Palmco did not fail to negotiate revision of the price in good faith for the year 2004

149. According to Respondent, Tenex breached its supply obligation for 2004, which caused significant damages to Palmco. In light of the plain language of Clause 3.3 and Swedish law, Tenex did not have a right to demand a price increase from Palmco and Palmco was not obligated to accept Tenex's proposals. Consequently, Tenex had no right to suspend performance for the 2004 delivery year. Tenex's only right was to approach Palmco and to request a price adjustment, and Palmco's only obligation was to consider that proposal and respond to it in good faith.

150. According to Respondent, the fulfilment of its obligation to respond to Tenex's proposal in good faith cannot seriously be questioned:

- Palmco promptly responded to Tenex's price proposal;
- It made clear its willingness to understand Tenex's position and the rationale behind it.

151. According to Respondent, in reality, it is Tenex that behaved in bad faith. First, Tenex repeatedly neglected even to address Palmco's concerns; it routinely ignored Palmco's correspondence for weeks or months. Above all, Tenex's proposal would have required Palmco to incur losses of approximately USD 2,748,000.

152. Second, as explained in the expert Witness Statement of Dr. Julian Steyn, the increase in the market price of EUP did not materially impact the cost at which Tenex was to supply the EUP to Palmco in 2004.

153. Third, according to Respondent, having come under new management in 2002, Tenex suggested that Palmco assign Tenex all of Palmco's EUP supply contracts with KHNP. Aware that KHNP still wanted to extend its Inventory Contract and fearful that Tenex might otherwise prevent Palmco from fulfilling its contractual obligations to KHNP, Palmco agreed to meet with Tenex and KHNP and discuss the possibility of assignments. Although the parties reached a verbal agreement during the meeting to extend the Inventory Contract and to transform it into a direct contract between Tenex and KHNP, the MOU prepared by Tenex did not accurately reflect the Parties' oral agreement, and it made clear that Tenex was not willing to pay Palmco fair compensation. Palmco was unwilling to relinquish its rights, and the proposed assignments did not take place.

154. Tenex began then to contact KHNP directly. But KHNP made it clear that, without the consent of Palmco, it would not agree to any new contractual scheme with Tenex. According to Respondent, just days after KHNP informed Tenex that it would not enter into any kind of direct relationship with Tenex without Palmco's consent, Tenex asserted (for the first time) that changes in the market price of EUP entitled Tenex to a dramatic price increase for the 2004 deliveries under the Inventory Contract.

155. Contacted by Tenex, Palmco first questioned whether the change in market prices had been "*substantial*" as necessary for Clause 3.3 to apply. Palmco also noted that the Inventory Contract was negotiated specifically to provide below-market pricing. Palmco also noted that Tenex had taken no account of the fact that, pursuant to the Inventory Contract's own price escalation provisions, the contract price itself had increased by six percent.

156. According to Palmco, Tenex's proposal of a price of USD 979/kgU was unreasonable and made in bad faith. Respondent alleges that this proposal not only did ignore that Palmco's contract with KHNP was for a fixed price with no provision entitling Palmco to request a price increase, but, as Tenex undoubtedly knew, Palmco's limited margin would not allow it to agree to such a significant increase. The price under the Palmco-KHNP contract for 2004 was USD 805. If Palmco had accepted Tenex's proposed price for 2004, Palmco would have suffered a loss of approximately USD 2,784,000.

2. Palmco did not fail to exercise the option

157. According to Respondent, Tenex ultimately shifted its purported justification for refusing to make the 2004 deliveries by accusing Palmco of a failure to give notice under Clause 5.1.2 of the Inventory Contract.

158. Respondent alleges that this argument ignores the express language of the Inventory Contract and the relevant rules of Swedish law. Contrary to Tenex's suggestion, Clause 5.1.2 does not impose any specific formalities for the exercise of Palmco's purchase option. It simply provides that, *"[f]or the Delivery Years 2003-2005, the Buyer shall notify the Supplier before the 1st of January of each Delivery Year of his intention to exercise an option to order the Enriched Uranium".*

159. According to Respondent, based on the lengthy correspondence and discussions between the parties for the year 2004, there can be no doubt that Palmco intended to exercise its purchase option in 2004 and that it adequately communicated that intent so as to satisfy the requirements of Clause 5.1.2.

160. In this respect, Respondent points out that, under Article 8 of the CISG, the conduct of a contracting party must be interpreted according to that party's own intent if the other party knew or could not have been unaware of that intent. Otherwise, a party's conduct is construed as would a reasonable person in the same position as the counterparty construe it. Here the result is the same under either interpretive framework: based on its knowledge of Palmco's parallel commitments to KHNP and Palmco's ongoing efforts to persuade Tenex to honor its supply obligations for 2004, Tenex clearly knew that Palmco intended to order EUP for the year 2004, and any reasonable person in Tenex's position would have reached the same conclusion.

161. In any case, according to Respondent, by the time Tenex asserted Clause 5.1.2 as a defense to performance in April 2004, Tenex had already fundamentally breached the Inventory Contract by refusing to honor its 2004 supply obligations. And it is well established under Article 71 of the CISG that a party has the right to suspend its performance once the other party makes it apparent that it will not perform its own contractual obligations. Therefore, Tenex's fundamental breach absolved Palmco of any obligation to provide notice under Clause 5.1.2.

162. According to Respondent, far from insisting that Palmco notify Tenex of an intent to exercise its option before January 1, 2004, Tenex made it clear that any attempt to exercise the option at the contract price would be futile but that Palmco would be given until well after January 1, 2004 to accept Tenex's new price proposal. In these circumstances, Tenex's new-found reliance on Clause 5.1.2 not only suggests the weakness of Tenex's earlier reliance on Clause 3.3, it also underscores Tenex's persistent bad faith. Under Swedish law, such bad faith invalidates Tenex's pretextual use of Clause 5.1.2.

163. Respondent finally alleges that shortly after Tenex seized the pretext of the purported absence of notification, Palmco learned facts that laid bare the true motivation behind Tenex's tactics.

According to Respondent, Tenex had, without informing Palmco, arranged a direct meeting between itself and KHNP on April 27, 2004. Palmco submits that Tenex offered to sell to KHNP the same quantities and specifications of EUP as Tenex was obliged to supply to Palmco at the same below-market prices that Palmco had, with Tenex's knowledge, committed to KHNP for the years 2004 and 2005.

3. Conclusion

164. According to Respondent, Tenex's refusal to honor its delivery obligations for 2004 was entirely unjustified. Moreover, it caused Palmco to incur significant damages based on Palmco's resulting inability to perform its 2004 obligations to KHNP.

165. As an initial matter, Palmco was unable to realize its anticipated profits on the 2004 delivery – *i.e.* USD 1,402,240. Even more significantly, Palmco has incurred heavy penalties under Palmco's contract with KHNP and Palmco is potentially exposed to even greater damages in the event KHNP is held to be entitled to charge Palmco for the purchase of substitute EUP at today's market prices.

166. Swedish courts recognize that, under Article 48 (1) of the CISG, an aggrieved buyer may require the seller to perform his delivery obligations. Moreover, under the CISG, the buyer may require the seller to perform his obligations at a date subsequent to the original date of delivery, even if the buyer did not previously provide the seller with normal notice of its intent to do so.

167. In addition to the right of specific performance, Article 74 of the CISG permits an aggrieved buyer to obtain money damages sufficient to compensate it for all foreseeable losses incurred because of the seller's breach, including lost profits and liabilities incurred *vis-à-vis* third parties.

168. It is also appropriate under Swedish arbitration law for an arbitral tribunal to declare that a breaching seller shall be liable to the intermediary for any resulting penalties or damages for which the intermediary is subsequently held liable *vis- à-vis* some third person.

169. Under the standards of the Swedish Arbitration Act, a panel may make a general declaration of liability to the effect that a breaching seller shall be held liable for any damages or penalties that the aggrieved buyer is ultimately required to pay to third parties as a result of the seller's non-performance.

Chapter VII: Discussion and Decision

Section I: The issues

170. The claims for relief submitted by the Parties raise essentially the following issues:

- In relation to year 2004,
  - What is the correct interpretation of Clause 5.1.2 of the Contract?
  - Did Palmco comply with Clause 5.1.2?
  - How is Clause 3.3 of the Contract to be interpreted?
  - Did Palmco comply with its obligations under Clause 3.3?
  - What consequences may be drawn from the answers to the above questions? In particular, is Palmco's claim for specific performance admissible and in the affirmative, founded? And alternatively, is Palmco's claim for damages founded? In addition, is Palmco's claim to be indemnified by Tenex for any amount of penalties or costs for the purchase of replacement goods that Palmco would have to pay KHNP in connection with Palmco's inability to make the 2004 EUP delivery, justified and founded?
  - If any of these claims is considered founded, should Tenex be ordered to pay Palmco interest and in the affirmative, in what amount?
- In relation to year 2005,
  - Is the clause of Addendum No. 4 providing for a reservation regarding the provisional character of the EUP price fixed in the Addendum for 2005, valid and binding between the Parties?
  - Does this clause give this Arbitral Tribunal jurisdiction to determine the final price of EUP for 2005 and in the affirmative on what basis?
  - What conclusions are to be inferred from the answer to the last question and in particular what price should finally apply to the deliveries of EUP by Tenex to Palmco in 2005?
  - Depending on the answer to this question, is Tenex's claim to order Palmco to pay Tenex USD 3,212,400 founded? And in the affirmative, should the Arbitral Tribunal order Palmco to pay interest on this sum and in what amount?
- In relation to all claims and counterclaims, who should bear the costs of this arbitration?

171. For reasons of commodity in the discussion, the Arbitral Tribunal will proceed in chronological order, starting with the year 2004 (the Counterclaim) and continuing with the year 2005 (the Main Claim).

Section II: The year 2004

172. While the Contract applied to the period 2001-2005, purchases were optional as from 2003. According to the first sentence of Clause 5.1.2, Palmco was to notify Tenex before 1 January of each delivery year of its "intention to exercise an option to order" the EUP. The second sentence of Clause 5.1.2 provides that, "[i]n case [Palmco] decides to exercise the option and to order the quantities of [EUP]", Tenex shall be obliged to deliver according to the provisions in Clauses 5.1.3-5.1.5. The Arbitral Tribunal interprets Clause 5.1.2 to mean that before 1 January each year there was to be a notification of intention and that the final binding decision to buy was to be made later but subject to a further notice in accordance with Clause 5.1.3. In other words, the notification to be made before 1 January was an advance notice which would invite Tenex to be prepared to deliver if it was followed by a final order for a specific quantity of EUP. On the other hand, if Tenex received no notification before 1 January, it was entitled to conclude that Palmco would not exercise the option in the following year.

173. It results from this interpretation of Clause 5.1.2 of the Contract that the advance notification provided for in that Article had a relatively limited importance. Consequently, there was no reason to require very much as regards the form and precision of the notification. In any case, Clause 5.1.2 does not provide for any specific form with which the notification had to comply. It is therefore the Arbitral Tribunal's opinion that the notification could be made in an informal manner and that any declaration which implicitly or in an indirect manner showed an intention to use the option could be considered sufficient, provided that Tenex was made aware of Palmco's intention and could consequently take any preparatory measures necessary for the fulfilment of its delivery obligations.

174. It is correct to note, however, that Palmco made a formal notification for the year 2003 (letter of December 31, 2002) and made a similar, formal, notification for the year 2005 (letter of December 27, 2004). However, there were circumstances which explain why Palmco did not proceed in the same manner at the end of 2003. At that time, Tenex had made it clear that it was not prepared to deliver in 2004 unless Palmco accepted the price increase demanded by Tenex, and since Palmco did not accept the higher price, Palmco could not at that time make an unconditional notification of its intention to make use of the option for 2004. It remains that the correspondence between Tenex and Palmco during the last months of 2003 clearly demonstrates that Palmco intended to use the option, provided that there was an agreement on the price. Palmco's letters of December 2 and December 9, 2003 in which Palmco asked for production sites for delivery to KHNP in 2004 made its intention even clearer. The Arbitral Tribunal therefore concludes that Palmco gave sufficient notice to satisfy the requirement in Clause 5.1.2 of the Contract.

175. Having found that the requirement in Clause 5.1.2 was satisfied, the Arbitral Tribunal will now turn to the interpretation of Clause 3.3 of the Contract which provides that, if the situation in the world uranium market changes substantially, either Party shall have the right to approach the other Party with a request to revise the agreed purchase price. It will then proceed to the determination of whether Palmco breached its obligations under this provision for the year 2004. The questions to be examined in this respect are whether there was a substantial change in the world market prices and, if so, whether Palmco fulfilled its obligations under Clause 3.3.

176. It results from the evidence submitted by the Parties that Clause 3.3 of the Contract had essentially the following background. In order to be able to win KHNP's tender and conclude a contract with KHNP, Palmco was interested in buying EUP from Tenex at a price which should not only be as low as possible but also foreseeable and relatively constant during the whole contract period. In this connection, Tenex, in its letter of June 8, 2001, proposed a right to propose a review of prices in case of substantial changes in the market situation. While such a clause was not included in the draft contract transmitted from Palmco on June 28, 2001, a clause regarding renegotiation in case KHNP, due to substantial changes in market prices, decided not to order EUP from Palmco, was proposed by Palmco on July 13, 2001. This clause was subsequently amended by Tenex. In the end, the Parties agreed on an initial price which was about 20% below the market price (Jeff Combs' report, para. 24), combined with, on the one hand, a gradual increase specified in the Contract and, on the other hand, Clause 3.3 which was supposed to provide a remedy in case prices would change in an unexpected manner. According to the terminology used in Clause 3.3, the latter deals with the case where the situation in the world market "changes substantially", but it does not specify how the term "substantial" shall be understood in this context.

177. Jeff Combs states in his Report that from September 5, 2001 (the date of the Contract) until the end of November 2003 the market price increased from USD 821-827 per kgU (para. 24 of the Report) to USD 966 per kgU (para. 36 of the Report), i.e. by 16.8-17.5%, and that it continued to increase to USD 1,193 per kgU during the latter part of 2004 (para. 37 of the Report), i.e. an increase of more than 40%, and to USD 1,484 per kgU in August 2005 (para. 38 of the Report), i.e. an increase of some 80%. However, certain moderate price increases were provided for in the Contract, and it does not seem unreasonable to take them into account when assessing whether there had been a substantial change which justified the implementation of Clause 3.3 of the Contract. On such basis, the Arbitral Tribunal is not convinced that there had been a substantial increase already in October 2003, when Tenex first raised this matter with Palmco. However, prices continued to rise, and the increase clearly became substantial in 2004. At some stage during that year, while the discussions between the Parties continued, Tenex was therefore entitled to invoke Clause 3.3 of the Contract.

178. The question therefore arises as to how Clause 3.3 of the Contract is to be interpreted in a situation when there is a substantial change of prices. The Arbitral Tribunal considers that it cannot only imply that one Party shall be free to make a request for price changes to the other Party. Such an interpretation would render the provision legally meaningless, since nothing would prevent a Party, even without such a clause, to make a proposal to the other Party. The Tribunal rather considers that the purpose of Clause 3.3 was to make it clear that unexpected price changes on the world market would constitute a reason for the Parties to reconsider the prices agreed in the Contract. In order to give the clause some practical effect, one must further assume that a Party which received a request with reference to this Article could not simply reject the request but had to examine it and respond to it in good faith and within a reasonable time. If the request was rejected, the Party rejecting it had to give reasons for the rejection, but when this had been done and the reasons given were not manifestly unfounded, the rejection could not be considered to be in violation of that Party's obligations under Clause 3.3. The next question to be examined is therefore whether Palmco complied with its obligations under Clause 3.3.

179. Although the Arbitral Tribunal has not found it established that the increase of market prices became substantial until some time in 2004, the Tribunal finds it relevant to examine how Palmco reacted to Tenex's proposals for an increase of the contract price throughout the period during which this matter was being discussed between the Parties. The Tribunal attaches weight in this respect to the following correspondence:

(a) *Tenex's letter of October 8, 2003.* In this letter, Tenex argues that the EUP price has grown by 20-25% from the moment when Tenex and Palmco agreed on the prices in the Contract and asks, with reference to Clause 3.3 of the Contract, for Palmco's agreement to revise the prices.

(b) *Palmco's letter of October 13, 2003.* Palmco replies that, as from September 2001 until September 2003, the prices increased only by approximately 9% and that during the same period the Contract prices increased by approximately 6%. Palmco therefore considers that it is not justified to apply Clause 3.3.

(c) *Tenex's letter of November 14, 2003.* Tenex gives more statistical data and reaches the conclusion that the EUP prices from the date of the Contract until November 2003 have increased by more than 17% and that, since the Contract price was agreed several months before the Contract was signed, the relevant price increase amounts to 20-25%. Tenex further accuses Palmco of refusing to negotiate in good faith and to revise the Contract prices on the basis of Clause 3.3. Further, Tenex declares that it will not implement the Contract until there have been negotiations on the prices.

(d) *Palmco's letter of November 21, 2003.* Palmco admits that prices have increased but finds Tenex's quantification misleading. Palmco states that it is wrong to take into account price increases that occurred before the Contract was signed and criticizes Tenex's methodology. Moreover, Palmco provides new figures and reaches the conclusion that, from the date of the Contract until October 2003, the prices increased by some 13.3% from which should be deducted the increase of 5.6% resulting from the Contract itself. The relevant price growth is therefore 7.7%, which is not sufficient for the implementation of Clause 3.3.

(e) *Tenex's letter of December 19, 2003.* Tenex provides new figures which show a price increase of 17.6% from August 2001 to November 2003. Tenex disputes that the contractual price increases should be taken into account and repeats that it will not implement the Contract until the prices have been reviewed. Finally, Tenex proposes a price for 2004 of USD979 per kgU and states that this offer is valid until January 15, 2004.

(f) *Palmco's letter of December 30, 2003.* Palmco replies that the proposed price for 2004 constitutes a 38% increase over the Contract price for the same year, which Palmco finds excessive. Palmco asks Tenex to reconsider its position.

(g) There is no further correspondence on this matter until April 2004 when Palmco indicates that it wishes to exercise its option (letter of April 2, 2004) and Tenex responds that it will not implement the Contract until there is an agreement about the price (letter of April 7, 2004) and finally indicates that it will not deliver EUP in 2004 because Palmco has not exercised its option by notifying Tenex in time (letter of April 15, 2004).

180. The correspondence summarized above demonstrates that Palmco justified its rejection of Tenex's request with arguments which cannot be considered unreasonable. It invoked statistical figures and referred to the fact that certain price increases were already foreseen in the Contract. Moreover, it answered Tenex's letters speedily. Indeed, it acted more speedily than Tenex did, when replying to Palmco's letters. Having taken into consideration all the evidence submitted by the Parties, the Arbitral Tribunal does not find that Palmco failed to act in good faith in its correspondence with Tenex regarding the development of EUP prices and the application of Clause 3.3 of the Contract.

181. The Tribunal's conclusion is therefore that there was no breach by Palmco of its obligations under Clause 3.3 of the Contract and that, consequently, Tenex was not entitled to depart from its obligation to deliver EUP in 2004 at the price set out in the Contract.

182. Palmco now requests that Tenex be ordered to deliver to Palmco the quantity of EUP that should have been delivered in 2004 at the price provided for that year in the Contract. Alternatively, Palmco claims damages. Tenex contests these claims. As regards the claim for specific performance, Tenex objects that the claim is a new claim which was raised too late, *i.e.* only one and a half month before the final hearing. Tenex also argues that, unlike Section 23 of the Swedish Arbitration Act, Article 22 of the SCC Rules, which is applicable in this case, does not allow a party to add new claims but only to amend claims made previously. Finally, Tenex states that it cannot be ordered to deliver the requested quantities at the prices indicated in the Contract since these prices need to be revised in accordance with Clause 3.3 of the Contract.

183. Article 23 para. 2 of the Arbitration Act provides that the claimant may submit new claims, and the respondent his own claims, provided that the claims fall within the scope of the arbitration agreement and that, taking into consideration the time at which they are submitted and other circumstances, the arbitrators do not consider it inappropriate to adjudicate such claims. Article 23 para. 2 further provides that, subject to the same conditions, each party may amend or supplement previously presented claims during the proceedings and may also during the same proceedings invoke new circumstances in support of his case. On the other hand, Article 22 of the SCC Rules, in their applicable version, allows a party to amend his claim or defense in the course of the proceedings if his case, as amended, is still covered by the arbitration agreement, unless the Arbitral Tribunal considers it inappropriate, having regard to the point of time at which the amendments are requested, the prejudice that may be caused to the other party, or other circumstances.

184. Although Article 22 of the SCC Rules only refers to amendments of claims, the Arbitral Tribunal considers it unlikely that the intention was to exclude the addition of new claims. It finds it reasonable to interpret the term "amend" so as to include the addition of new claims. The Swedish text of Article 22 supports this interpretation in so far as it contains the more general expression "*ändra sin talan*" which seems to include any changes of the manner in which a party conducts its case, thus including the addition of new claims. The Arbitral Tribunal also notes that in the revised SCC Arbitration Rules (which entered into force on January 1, 2007), Article 25 provides that a party may "amend or supplement" its claim. The Tribunal does not believe that this new wording was intended to imply a substantive change. Consequently, the Tribunal concludes that the wording of Article 22 of the SCC Rules does not prevent Palmco from now requesting specific performance, unless the Arbitral Tribunal would consider it inappropriate, for instance because the claim was introduced so late that it caused prejudice to Tenex.

185. In this regard, the Arbitral Tribunal considers that, although the claim for specific performance was raised in Palmco's Reply and Rejoinder of January 26, 2007, Tenex had

sufficient time to respond to it and defend itself in an effective manner, and the Tribunal does not see any other reason why the claim should not be admitted.

186. As to the merits, the Arbitral Tribunal considers that under Article 45 CISG, which – as the Parties agree – applies in this case, if the seller fails to perform any of his obligations under the Contract, the buyer may request specific performance and/or claim damages. Article 46 CISG further provides that the buyer may require specific performance unless he has resorted to a remedy which is inconsistent with this requirement. This is not the case here. The fact of initially claiming damages is not inconsistent with a subsequent claim for specific performance, since one is not exclusive of the other (Article 45 (2) CISG). In this case, on the other hand, Palmco has made clear that its claims are alternative: damages are not claimed beyond specific performance.

187. The Arbitral Tribunal considers that since Tenex breached its contractual obligations by not delivering EUP in 2004 at the price provided for in the Contract, the most appropriate remedy is that Tenex be now ordered to fulfil its obligations. Specific performance should therefore be granted and Tenex be ordered to deliver to Palmco no later than six months from the date Palmco shall request delivery following the issuance of the Tribunal's award, 16 metric tons of EUP 4,5 assay at the price of USD 711.11 per kgU, as per the Contract for year 2004.

188. Since specific performance is granted, Palmco's claims for damages and interest become moot.

189. Palmco also requests that the Arbitral Tribunal should declare that Tenex shall indemnify Palmco for such late delivery penalties or costs for replacement goods for 2004 as may be imposed by KHNP on Palmco. This claim relates to future events which have not yet materialized. It is therefore impossible to know at this stage whether any such penalties or costs for replacement will be claimed by KHNP and in the affirmative whether they will be reasonable or justified. The Arbitral Tribunal therefore rejects this claim without prejudice for Palmco to raise the issue again if and when the situation occurs.

Section III: The year 2005

190. After the deadlock between the Parties in 2004, the discussions on deliveries and EUP prices were resumed in 2005. In a letter of February 28, 2005, Tenex proposed to fix the price for 2005 at the level of USD 982 per kgU. Tenex pointed out that the market price had risen by 48.8% since September 2001 and considered that the Contract price should be adjusted accordingly. Palmco replied on March 1, 2005 that the proposal was unfounded but offered, as a matter of goodwill, to increase the Contract price by 2% up to USD 739.84 per kgU. In its letter of March 11, 2005, Tenex responded that prices continued to go up and that there had been an increase of more than 48% since the year 2001. However, Tenex announced that it was ready to give Palmco a 3% discount from its previously proposed price which meant that Tenex proposed a price of USD 952 per kgU. Palmco, in its letter of March 14, 2005, maintained its proposal for a price of USD 739.84 per kgU. After some further correspondence (Tenex's letter of March 23, 2005, Palmco's letter of March 25, 2005,

Palmco's letter of May 10, 2005, Tenex's letter of May 23, 2005, Palmco's letter of June 7, 2005 and Tenex's letter of June 17, 2005), Tenex finally stated, in its letter of 30 June 2005, that it was "forced to accept [Palmco's] unjustified 2% price increase proposal". Tenex also proposed to fix a new contract price in an Addendum to the Contract and undertook to send Palmco such a draft Addendum at a later time.

191. On 8 September 2005, Tenex sent a draft Addendum to Palmco with a letter in which it stated as follows:

> "Please find attached Addendum No. 4 signed by TENEX for your countersignature. The price for EUP stated in Addendum No. 4 incorporates a 2% increase over the Purchase Price for 2005 stipulated by Article 3.1. This revised price is provisional and is subject to a final determination of the price by an arbitral tribunal in accordance with Article 13 of the Contract.
>
> Please be informed that TENEX reserves all its legal rights to commence an arbitration in Stockholm claiming a revision of the price under the referenced Contract. The reasonable price should be 954$/kgU as EUP (market price for 4 quarter of 2004 is 1192$/kgU minus 20%). As we have informed you many times the market prices have the strong tendency to rise further. Please note that the current market price is 1471$/kgU."

192. The draft Addendum No. 4 stipulated for 2005 a price of USD739.84 with the following note:

> "The indicated price is provisional and is subject to a final determination by an arbitral tribunal."

193. The draft Addendum No. 4 was signed by Palmco which returned a copy of the document to Tenex with a letter of September 12, 2005. The letter concluded as follows:

> "Attached please find the signed copy of Addendum No. 4 as drafted by TENEX. However, it should be understood that your included 'reservation of rights' for TENEX effectively reserves the rights for both Parties to the contract. Therefore, Palmco reserves its rights to seek reimbursement of the price increase reflected in Addendum No. 4, as well as all other damages resulting from TENEX' breach of the referenced contract."

194. The inclusion of a reservation regarding the provisional character of the price may have come as a surprise to Palmco, which may not have fully appreciated its legal implications. Nevertheless, the Addendum with this reservation was signed by both Parties. Consequently, the Arbitral Tribunal cannot find any reason for declaring it invalid, for instance as having been accepted under duress or deceit. It follows that Addendum No. 4 is a valid and binding agreement between the Parties.

195. The question therefore arises how the relevant clause should be interpreted and what legal implications it should have.

196. The clause in the Addendum clearly states that the Arbitral Tribunal shall determine the price. Moreover, it appears from Tenex's accompanying letter that Tenex considered that an arbitral tribunal should be competent to determine a price different from that which appeared in the Addendum. And not only Tenex but also Palmco were of that opinion. This appears from Palmco's statement in its letter in reply which indicated that an arbitral tribunal would be competent to determine a lower price than the price in the Addendum, *i.e.* by removing the

2% supplement. Moreover, Mr. Lee stated the following in his witness declaration: "And simply we want to settle with the 2 percent, and they want to have the arbitration for whatever price, and it simply meant we disagree, so let arbitration decide. So that is what I understood this to be."

197. But even if the Parties apparently agreed that the Arbitral Tribunal would be competent to decide on the price, the question remains on what basis the price should be determined. The Parties did not specify this, and they did not request the Arbitral Tribunal to act as *amiable compositeur*. While in Swedish law the normal task of arbitrators is limited to interpreting and applying agreements between the parties, Section 1 para. 2 of the Swedish Arbitration Act provides that arbitrators may also be entrusted with the task of filling gaps in agreements *("komplettera avtal")*. However, such competence must be specifically conferred upon them by the parties, and this has not been done in the present case. The Arbitral Tribunal cannot therefore go beyond an examination of whether the contractual provisions in force between the Parties provide a basis for increasing the purchase price and, if so, at which level. It must in principle be incumbent on Tenex, which claims a higher price than that which appears in Addendum No. 4, to show that there is a legal ground for such a price increase.

198. In this respect, the Arbitral Tribunal notes that the only provision dealing with price changes is Clause 3.3 of the Contract which allows a Party to make a request to the other Party and only imposes an obligation on that Party to respond in good faith and within a reasonable time to the other Party's request for a price change (see above para. 178). The clause gives no indication of the level at which a higher price should be determined and contains no specifications which could serve as a basis for determination of an amended price. Nor is any such parameter to be found in Addendum No. 4. Consequently, although in the Addendum the Parties have given the Arbitral Tribunal competence to determine a price, they have not provided the Tribunal with any legal basis for such determination by specifying, for instance, the main elements or facts that should be decisive for the determination of the price. Moreover, it is likely that the Parties, when executing the Addendum, had very different ideas of what these elements or facts were to be. In these circumstances, the Tribunal cannot find in the Contract or Addendum No. 4 or in any evidence adduced by Tenex a basis for determining a higher price than the provisional price agreed for 2005 in the Addendum itself, i.e. USD 739.84 per kgU.

Section IV: The Costs

199. According to Clause 13.4 of the Inventory Contract, each Party shall bear its own expenses with respect to any arbitration and the compensation and expenses of the arbitrators shall be borne in such a manner as may be specified in the decision of the arbitrators.

200. Accordingly, the Parties have not requested compensation for their own costs for legal representation and expenses. However, each Party has demanded that the other Party shall bear the arbitration costs, i.e. the Arbitrators' fees, the administrative fee of the Arbitration Institute as well as any compensation due to the Arbitrators and the Arbitration Institute to cover their expenses during the proceedings.

201. According to Article 40 of the SCC Rules, the Parties are jointly and severally liable for all payments of all arbitrations costs, and the Arbitral Tribunal shall decide on the apportionment

of the arbitration costs as between the Parties with regard to the outcome of the case and other circumstances.

202. In the present case, Tenex is the losing Party in respect of the main claim and the counterclaim with the exception that Palmco's request that the Arbitral Tribunal should declare Tenex obligated to indemnify Palmco for late delivery penalties and costs for the purchase of replacement goods was not granted. The Tribunal considers, however, that this specific matter was a minor issue in the proceedings and that Tenex, as the losing Party on all other points, should finally bear the costs of the arbitration.

203. The Arbitration Institute has determined the arbitration costs as follows:

Professor Bernard Hanotiau	
- Fee	EUR 78 342 and VAT
- Expenses	EUR 3 368
Former Justice Hans Danelius	
- Fee	EUR 47 005
Dr Robert Briner	
- Fee	EUR 47 005
- Expenses	CHF 6 625
SCC Institute	
- Administrative fee	EUR 23 913
- Expenses	SEK 54 179

For these reasons,

The Arbitral Tribunal:

On the Claims:

- Decides that the Tribunal is authorized to determine the Purchase Price for 2005;
- Determines the Purchase Price for 2005 at USD 739.84 per kgU;
- Consequently, dismisses Tenex's claims.

On the Counterclaims:

- Declares that Tenex breached the Inventory Contract by refusing to deliver the ordered UEP in November 2004;
- Orders Tenex to deliver to Palmco no later than six months from the date Palmco shall request delivery following the issuance of the Tribunal's award, sixteen (16) metric tons of EUP of 4.5 percent assay at the price of USD 711,11 per kgU;

- Dismisses Palmco's counterclaim to declare Tenex liable to indemnify Palmco for any amount of late delivery penalties or costs for the purchase of replacement goods that Palmco might have to pay to KHNP, without prejudice for Palmco to raise this issue again if and when the situation occurs.

On the Costs:

- Decides:

  - that, in accordance with the decision of the Arbitration Institute of the Stockholm Chamber of Commerce, the Arbitrators and the Arbitration Institute shall be entitled to fees and compensation for expenses in the following amounts:

  (a) Bernard Hanotiau:

- Fee	EUR 78 342 and VAT
- Expenses	EUR 3 368

  (b) Hans Danelius:

- Fee	EUR 47 005

  (c) Robert Briner:

- Fee	EUR 47 005
- Expenses	CHF 6 625

  (d) The Arbitration Institute

- Administrative fee	EUR 23 913
- Expenses	SEK 54 179

  - that, in relation to the Arbitrators and the Arbitration Institute, the Parties shall be responsible, jointly and severally, for the payment of the amounts due to the Arbitrators and the Arbitration Institute;

  - that, as between the Parties, Tenex shall be alone responsible for the payment of the amounts due to the Arbitrators and the Arbitration Institute and that, accordingly, Tenex shall compensate Palmco for the amount advanced by Palmco in respect of such costs.

According to Section 41 of the Swedish Arbitration Act *(lag 1999:116 om skiljeförfarande)*, a Party which is dissatisfied with the decision regarding the remuneration to the Arbitrators may lodge an appeal against that decision with the Stockholm District Court *(Stockholms tingsrätt)* within three months from the day on which that Party received the present award.

Place of Arbitration: Stockholm, Sweden
On ..11...June 2007

The Arbitral Tribunal:

Hans Danelius
Arbitrator

Robert Briner
Arbitrator

Bernard Hanotiau
Chairman