



**CPR**

International Institute for  
Conflict Prevention & Resolution

## **2019 CPR International Mediation Competition Problem**

### **Clarification Questions**

**February 15, 2019**

1. Regarding the malfunctioning storage containers, did they belong to TFE, the airline or the airport?

Answer: There is no container. The spoilage was caused by severe temperature variations. Please see page 7, item 3, paragraph 2 of the Problem.

2. What is the extent of applicability of the CISG (Vienna Convention) with regard to the present problem?

Answer: Tupi and Kanata are both signatories of the CISG.

3. Does TFE have any other significantly large (even though AFW is the major) client(s) or negotiations that could sustain their activities and allow positive financial reports in a case scenario of relationship rupture?

Answer: All information relevant to this question is in the Problem.

4. What are the reasons causing the severe temperature variations during storage?

Answer: According to the information given by TFE, Cumbuco Airport has a problem with maintaining the right temperature during the storage. For further information, please see page 21 of the Problem.

5. Given that AFW is the second largest producer of figs in the world, what company is the first one?

Answer: Not relevant at this point. Be aware that Turkey is the largest producer of figs in the world.

6. More specifically, what are the other peripheral causes that are making TFE's banking partners pressure the company?

Answer: All information relevant to this question is in the Problem.

7. The third clause of the PSA discusses the delivery terms. It states that transportation should be by flight between pre-discussed airports; and that there is a CIP from the company's site to the concerning airport in Tupana. How does the air transportation occur? Is there any contract between TFE and a third-party transportation company? If so, what are the terms of said contract? Is the transportation insured? If so, what are the terms of this insurance?

Answer: For more information about the delivery conditions, see section 3 and 3.1 of the PSA (page 11 of the Problem).

8. The Datalogger starts tracking the temperature on July 23rd 2018 at 18:46, and finishes on July 25th at 8:16. The trip length is stated as 2 days, 13 hours and 35 minutes. Is this the regular schedule for the trip? How long would it otherwise have taken to transport the figs between Cumbuco/Copus and Persons/Trousseau? Was there any specific problem that delayed the voyage?

Answer: From the farm to the final customer, the trip takes up to 48 hours (Page 7, Paragraph 2). The duration of the flight from Cumbuco/Copus to Persons/Trousseau is usually 11 to 16 hours. **Please consider 1 day, 13 hours and 30 minutes as the correct trip**

**length (instead of 2 days, 13 hours and 35 minutes – Page 22).** This change will be reflected in Version 2 of the Problem.

9. Since the case tells us the trips on July 25th and October 17<sup>th</sup> were under equal circumstances, should we presume the issues were the exact same? And if the issues are the same, what explains the fact that the number of spoiled figs doubled?

Answer: The circumstances are not exactly the same. All information relevant to this question is in the Problem.

10. We understand that all teams in the competition are writing from the perspective of AFW. However, a significant amount of information is provided regarding TFE. We assume that it is appropriate and allowable to include some level of analysis of the other party in our written response (e.g., speculating on what the other party's positions and interests may be in our attempt to frame the issues for the mediator). We are hoping to confirm whether this is the case, or whether we should focus solely and exclusively on AFW.

Answer: Yes, that is correct.

11. Are there any formatting rules to the Written Statement, as minimum or maximum number of pages, font, spacing or other formatting specifications?

Answer: No, there are not.

12. Do J. Carthier and A. Barbosa, as CEOs, have the full, unqualified authority to negotiate on behalf of each company?

Answer: Yes, they do.

13. The Problem mentions that Tupana is located in South America, but it does not clarify where Kanata is located. In which continent does AFW have its headquarters? Is AFW's business limited to selling figs only or do they sell other products as well?

Answer: AFW's headquarters is located in Kanata, North America. AFW sells other fruits as well.

14. Assuming FTE and AFW have developed a chain supply that allows consumers to have fresh figs within 48 hours, and that these activities are currently being monitored by Datalogger, which of the parties has installed / provided the Datalogger?

Answer: Following the usual market procedures, the Datalogger is attached to each shipment in order to precisely monitor temperature and time.

15. Even though item 1.2 of the first amendment of the PSA (Annex 7) established that the AFW would purchase figs exclusively from TFE, the e-mails exchanged between the parties mentioned that TFE would sell figs to AFW exclusively as well. Is the exclusivity clause binding for both parties or only regarding the buyer?

Answer: Section 1.2 of the First Amendment of the PSA should be interpreted by the parties and their legal counselors.

16. Division of crops: figs, melons, papayas, oranges and ginger (Page 3, paragraph 2) and Production levels of fig trees (Page 4, paragraph 6).
- a. Please clarify the allocation of TFE's production among its various crops – what proportion/percentage is dedicated to figs versus the other crops, and how many fig trees (out of the 200 trees per hectare for production levels) are close to the full maturity of 35 years?

Answer: Figs are responsible for more than 50% of TFE's annual revenue. Following best practices, TFE developed a pioneering project involving tree-planting and the best use of the soil in order to maintain its level of production.

17. Agri-Holdings (page 3, paragraph 3). The statement appears that, "The agri-holdings of TFE are a split between a 60% family-owned company and a 40% rural partnership with local and regional cooperatives comprising small to large-size farmers." (page 3, paragraph 3).
- a. Please clarify whether the "60% family-owned company" refers to TFE, a subsidiary of TFE or is the Barbosa's Family the 60% family; and, with reference to the regional cooperatives, please clarify the meaning of 'regional' since regional may be within the same country but outside of Tampa (in Tupana), or within the South American region.

Answer: The Barbosa family directly owns 100% of TFE. TFE obtains its revenue as follows: 60% from fruit produced on land that is owned by TFE (own farms) and 40% from partnerships with third parties (farms, sites or small farms, landowners, where seed investment, fertilization, soil management and harvesting are funded by TFE). The term "regional" should be understood as a region of the same country.

18. Percentage shareholdings of TFE (Page 1 paragraph 2) and AFW (Page 5, paragraph 2)
- a. What are the percentage shareholdings and identity of the respective shareholders in both TFE and AFW? We are only told that A Barbosa is a major shareholder in TFE and we are not told of the ownership of AFW nor AFW's date of formation. Please clarify both TFE and AFW's shareholders and also AFW's date of formation/incorporation.

Answer: The Barbosa family directly owns 100% of TFE. Mr. A. Barbosa is the main shareholder of TFE. AFW belongs to the Carthier family and J. Carthier owns 49% of the company.

19. Shipping and transport (Annex 1 Clause 5.1 of the PSA)
- a. Please clarify the undefined term of 'standardized pallets' which is used in Clause 5.1 by identifying how many boxes (and the weight of each box) can a standardized pallet accommodate for packing purposes, exportation and transport of products?

Answer: A standardized pallet contains 240 boxes of figs. Each box carries 24 fresh figs and each box weighs 1.2kg.

20. What do TFE's partners in the national and international markets think about the problems of temperature control, pests and "calda bordalesa" in the figs distributed by TFE?

Answer: The problems mentioned are related to the figs sold by TFE to AFW. The opinions of third parties do not change any of the issues to be dealt with between TFE and AFW.

21. Datalogger covers the period between the plane's arrival in Kanata until the moment which the figs are transported to the AFW's warehouse (page 7). However, the e-mail (Annex 9) sent by A. Barbosa says that the problems in temperature occurred in Cumbuco and refers this information to the Datalogger. Also, Datalogger shows that the trip length is 2d13h35min, but the total amount of time between the first measure (start time) and last measure (stop time) is 1d13h30min. How this difference of place and time can be explained and why did it take so long to do the trip between Kanata's airport and AFW's warehouse considering that a technology that provides fresh products in about 48 hours already exists?

Answer: From the farm to the final customer, the trip takes up to 48 hours (Page 7, Paragraph 2). **Please consider 1 day, 13 hours and 30 minutes as the correct trip length (instead of 2 days, 13 hours and 35 minutes – Page 22).** This change is already reflected in the Problem Version 2.

The Datalogger is a device that measures and registers time and temperature. The Datalogger covers the whole itinerary of the figs: from packing at TFE's premises to the arrival at AFW's warehouse. **Please consider "Datalogger records the time and temperature for the whole itinerary of the figs: from packing at TFE's premises to the arrival at AFW's closest refrigerated warehouse in Kanata". (instead of the previous wording - Page 7, last phrase from the 2nd paragraph).** This change will be reflected in Version 2 of the Problem.

22. Was the clause 1.1 of the first amendment to Purchase and Sale Agreement (PSA) (annex 7) applied to the events occurred in July 25, October 17 and October 24? If so, how?

Answer: Clause 1.1 of the first amendment to the PSA applies to events starting from January 2018 onward.

23. TFE used to receive great evaluations about its transparency related to fair trade best practices and regulatory and legal compliance. Recently, it has received low marks compared to its leading competitors, however, A. Barbosa is unaware of this information. Who collected the data, what was the criteria used and, especially, how this information was publicized to the companies involved in the research and the public in general?

Answer: That information was given to the SPG (Strategic Planning Group) for internal use only.

24. Are the figs sold by Tupi Fruits Exports LTDA. (TFE) organic?

Answer: The figs sold by TFE were not organically produced.

25. Did TFE and AFW ever have any problems, from 2006 to 2016 (before the signing of the PSA)?

Answer: A. Barbosa and J. Carthier have developed a good relationship. Any commercial issues arisen from the business were amicably solved in the past.

26. Clause 3.1 of the Purchase and Sale Agreement (Problem, p. 11) the purchase and sale of figs shall occur on a CIP (Carriage and Insurance Paid) basis. However, no further information on whether any insurance policy was contracted in compliance to said Clause. Please confirm if an insurance policy was contracted by any of the parties and, in case it was, describe its relevant terms and conditions.

Answer: The insurance policy was purchased by TFE for this operation pursuant to standard insurance practices.

27. Where exactly in South America will the new AFW's satellite facilities be located (Problem, p. 6, §4)?

Answer: Peru.

28. How does the fig refrigeration system works and is TFE responsible for it?

Answer: All information relevant to this question is in the Problem.

29. What is the reasoning used by AFW for the value of K\$24,000.00 of the indemnity intended in the email of August 1?

Answer: The amount of K\$24,000 was claimed as reimbursement for storage of figs which were not suitable for human consumption (Page 7 of the Problem).