Article 1134 para. 3 of the Ivorian Civil Code stresses that contracts must be performed in good faith. Furthermore, Article 1135 of the same code recalls that a contract binds the parties not only according to its wording, but also to the consequences thereof resulting from equity, custom and the law. In a contractual relationship which is the extension in time of previous relations between a Japanese Group and an Ivorian Group, constitutes the result of negotiations between English, Japanese and Ivorian parties and deals with the distribution in the Ivory Coast of Japanese products, the custom to be taken into consideration by the Arbitral Tribunal within the framework of Article 1135 of the Ivorian Civil Code is to be found within the usages of international trade.

One consequence of the principle recalled by Article 1134 para. 3 of the Ivorian Civil Code, according to which contracts must be performed in good faith, is that the parties must cooperate in good faith to reach the common goals contractually agreed upon. It is the basis of the identical text of Article 1134 para. 3 of the French Civil Code that French courts have decided that good faith and loyalty oblige a party to a contract to facilitate the performance of its obligation by the other party . . . Indeed, as written years ago by the French lawyer Demogue: "les contrats forment une sorte de microcosme (...) une petite société où chacun doit travailler dans un but commun, qui est la somme des buts individuels, poursuivis par chacun, absolument comme dans la société civile ou commerciale" (R. Demogue, Traité des Obligations, 1927, [Vol.] IV p. 191). Such obligation to cooperate in good faith in the performance of the contract has also become a fundamental element of the usages of international trade applicable to this case through Article 1135 of the Ivorian Civil Code and Article 13(5) of the ICC Rules. Such usage was pointed out by several awards rendered under the aegis of the International Court of Arbitration of the ICC . . . .

Further to a comparative study, Unidroit came to the conclusion that the obligation to cooperate in good faith in the performance of a contract amounted to a general principle applicable to international trade. Accordingly, this principle was reflected under Article 5.3 of the Unidroit Principles of International Commercial Contracts: "Each party shall cooperate with the other party when such cooperation may reasonably be expected for the performance of that party's obligations."

In conclusion, the Arbitral Tribunal will make its decision on the validity of the termination of the Agreement on the basis of the text thereof, in the light of the law of the Ivory Coast which requires good faith in the performance of contracts, such requirement also deriving from the usages of international trade.

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