International Court of Arbitration of the International Chamber of Commerce

[...]
Tribunal was indeed surprised that, when the procedure started anew after the Partial Award on the Merits, it received the same documents as produced at the beginning of the arbitration, which are, to say the least, a preliminary exploration of some suppliers. A ‘normal’ business operator would have acted differently. The margin which Claimant is alleging was so important that it would have incited every reasonable business operator to realise it. There must have been other reasons.

[50] “The only reason given by Claimant for not having made a cover purchase is that the successive validity periods of the letter of credit were too short. When the letter of credit was reopened three months after the Partial Award on the Merits, it provided for shipment until April of the following year. The letter of credit was probably not reopened without prior negotiation between the contracting parties (Claimant and the State X Entity). If it had been too short, Claimant would have protested and claimed against the State X Entity that the insufficient validity period prevented it from fulfilling the contract. Moreover, in order to comply with a shorter validity, Claimant could have approached suppliers and prepared the conclusion of the contract. The validity of a letter of credit has to take into account the delivery periods of the suppliers. Additionally, Claimant, in February of the year following the Partial Award on the Merits, was able to deliver within the remaining time period even though it was much shorter than the initial delivery period.

[51] “For all those reasons, Claimant's arguments did not convince the Tribunal.

Referring Principles:

VII.3.2 - Calculation of damages