



Enforcement of Gafta awards in Ukraine

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Despite Ukraine being one of the world leaders in grain export, many transactions are structured through affiliated companies in other jurisdictions. Yet, the issue of recognition and enforcement of Gafta awards in Ukraine is not futile: a number of Ukrainian companies, including state-owned ones, conduct their business directly; in addition, Ukrainian law allows for recognition and enforcement if the debtor's assets are located in Ukraine – even if it is a foreign company. In the latter case the winning party in arbitration has to identify the relevant assets and show that they belong to the respondent. Last, in limited circumstances arbitral tribunals may allow the bringing of a Ukrainian parent company into the arbitration.

The process of recognition of Gafta awards in Ukraine is relatively straightforward. Ukraine is signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. This means that foreign awards will be recognised by Ukrainian courts without review on the merits, and recognition can only be refused on the limited grounds listed in the Convention. It should be noted that Ukrainian courts usually expect the contract containing the arbitration clause to be in writing and signed by both parties.

Proper notice

The practice of recognition of Gafta awards in Ukraine is generally positive. However, a few potential problems are worth bearing in mind. A rather evident one is the absence of proper notice of arbitration proceedings to the respondent. A respondent that did not participate in the arbitration is almost bound to rely on this ground for refusal of recognition of the award foreseen by article V(1)(b) of the New York Convention.

This is the most prevalent ground for refusal of recognition and enforcement of arbitral awards in Ukrainian court practice. The claimant in Gafta arbitration should therefore be careful to collect evidence of proper notice to the other party (including evidence of actual delivery), and be prepared to discharge its burden of proof at the recognition stage.

Interest

The issue of interest in arbitral awards is a controversial one under Ukrainian law and may cause difficulty at the enforcement stage. While Gafta tribunals routinely award interest from the date of default until actual payment, in Ukrainian law the prevailing principle of predictability means that courts usually award a specific sum of interest calculated until the date of the claim.

Neither Ukrainian courts nor the Enforcement Service (a structure within the Ministry of Justice responsible for compulsory execution of court



Anastasiya Grenyuk

judgments and other decisions) are directly authorised to quantify the amount of interest at the stage of recognition and enforcement. In practice, Ukrainian courts either recognise arbitral awards verbatim without addressing the issue, or quantify the amount of interest as of the date of the decision on recognition. Neither approach is devoid of problems. In March 2016, Draft Law No. 4351 was registered in the Ukrainian Parliament seeking to codify the latter practice (among other legislative changes), but has not yet been considered.

Interim measures

The Civil Procedure Code of Ukraine was amended in 2011 to allow the possibility of applying for interim measures at any stage of consideration of the application for recognition and enforcement of a foreign arbitral award. Obtaining interim measures is not an easy task, as the courts' practice is quite restrictive, but with the correct approach it is a possibility. The applicant must show that in the absence of interim measures future enforcement of the award would become more difficult or impossible. Such measures must be specific and proportionate to the amount the applicant is seeking to recover.

Gafta in Kiev, 13 and 14 December 2017

Gafta's third **Trade & Trends Forum will be held in Kiev on 14th December**. Issues to be discussed include:

- The Ukrainian grain market
- Quality improvement perspectives
- Grain export logistics and infrastructure
- Trading with China
- Trading with India
- Trading with Southeast Asia

English Law for Foreign Lawyers, 13 December 2017

A Gafta training course, **"English Law for Foreign Lawyers"** will be held the day before the Forum in the same hotel on 13th December. This course is sponsored by **AGA Partners**. Gafta's Director General, **Jaine Chisholm Caunt**, General Counsel, **Jonathan Waters**, and the Kiev office Director, **Anna Golodova**, will be present.

Annual networking reception, 14th December

The Trade & Trends Forum will be followed by **Gafta's fourth Seasonal Networking Reception in the evening of 14th December**. This is a popular event, and we look forward to seeing you there!

Further details on these three events will be available shortly on the Gafta website. Please do register your interest at: **Events@gafta.com**

