



## Mediation – A Win-Win Solution to Resolve your Disputes

By Asma Benelmouffok

Gafta No. 128 Mediation Rules

Besides Arbitration Gafta now has Mediation Rules to help its Members resolve their disputes

### Main features of mediation

- A neutral mediator acting as a facilitator
- The mediator cannot impose a solution on the parties
- A negotiated solution addressing the parties' commercial interests
- A very rapid process (usually one session)

### Advantages of mediation

- Reasonable costs
- Rapidity
- Control of legal risks (solution of the parties)
- Continuity of relationships
- Total confidentiality

### What does it consist of?

Mediation is an amicable and confidential process to resolve disputes. Its purpose is to propose to the parties in dispute the intervention of a neutral third party, the mediator, who helps them to reach a negotiated solution in line with their respective interests and which will end their conflict.

### The process

The parties meet in presence of the mediator to renew the dialogue and to break the deadlock. The role of the mediator is first to help the companies in their presence to understand how their disagreement did build up. To ascertain the why of the conflict, the situation is not only examined from a legal angle but also takes into account the commercial aspects of the dispute and its consequences in terms of business. The purpose is to define which are the true interests at stake and then to find together a suitable solution. Once the mediation starts, the process is entirely oral; in the end a mediation settlement agreement is however signed by the parties. Usually one or a few sessions are required to find an agreement. Throughout the process, parties can be assisted by lawyers.

### The Gafta system for mediation

GAFTA mediation rules No. 128 provides for a mediation procedure. If a dispute arises between two companies both have to agree to go to mediation. A form, obtained from GAFTA, has to be filled in by parties with only names and references, the contract's date and the tonnage commodity. GAFTA will then appoint a GAFTA qualified mediator who will be responsible for progressing the mediation after no more than 45 days. (If an arbitration is already ongoing it will be stayed.) Each party will have to submit a summary of its position five days before the mediation session. The whole mediation process is on a without prejudice basis. Should the mediation fail, all and any information, documents etc made available or disclosed during the mediation shall in consequence remain private and confidential, and shall not be used in another forum including arbitration.

**It is always worth trying a mediation: with one session you can save years of procedures.**

*Asma Benelmouffok (asma@medialegeneve.ch) was admitted to the Geneva Bar in 1990. She was the general counsel of BNP PARIBAS for eleven years responsible for both private banking and trade finance departments. Being responsible for structuring financings and handling disputes she did develop over these years a solid expertise in solving disputes in trade related matters. From this experience she came to the conclusion that alternative dispute resolution methods, and in particular mediation, are particularly efficient for commodities disputes. In 2004 she set up her own practice of mediation, MEDIALE alternative business resolution. She is an accredited mediator. Asma is also a member of the board of directors of two banks in Geneva.*



ASMA BENELMOUFFOK

## Arbitration Rules – Legal Representation Reminder to Legal Advisors

An amendment was made last year to the GAFTA Arbitration Rules which means that the Secretariat is obliged for each case to seek the authority of the parties to the arbitration or appeal that their legal

advisor is authorised to act on their behalf.

Rule 16 of Arbitration Rules form No. 125 reads " In any event, an instructed

legal representative is obliged to provide proof of identity of their client's company and evidence demonstrating they are instructed to act by the party in the arbitration proceedings".