Summary of EPIS comments to Clauses 5, 9, 13 and 14

(Meeting in Frankfurt on August, 28th, 2013)

Clause 5(a) : Quality *(the disputes thereof)*

This clause once again generated much discussion.

At issue is the amount of time that customers have available to dispute the quality of the pulp that has been shipped/delivered to them.

In the old GTR document, this time limit was specified **as 30 days.** UTIPULP proposed this be changed **to 6 months**. This was, in turn, universally and categorically (but politely) rejected by EPIS based on the fundamental logic that typically no one keeps pulp stored for 6 months and that storage conditions vary very widely which subsequently can materially affect the pulp quality.

Subsequent discussions have not resolved the issue however!

- It was then revised to UTIPULP's current, very firm view (as previously reiterated) that this time frame should be **at least a minimum of 75 days** from when the pulp is effectively released to them - be that on (a) a CIF/CFR basis or (b) from the applicable warehouse.

- The EPIS members view was (initially) that this period should be no more than 45 days which was not acceptable to UTIPULP. This was then increased to 60 days which was also not accepted. EPIS members also maintain that to be meaningful this time issue **has to be linked** to INCOTERMS (the latest version).

On a practical side it was also pointed out by EPIS that, in reality, customer pulp stocks **on average, are well below the 75 or even 60 day levels** !

For example, Europulp/Utipulp stocks are typically around 20 days and even global pulp stocks (as reflected by the PPPC) are in the 40-45 day range. It was therefore suggested by EPIS that, in practice, apart from perhaps some specific quality pulps, pulp turned over much quicker than UTIPULP were prepared to acknowledge.

Clause 9 : Delayed shipment….

This GTR clause was originally related, in the early days, to vessel **delays at the producer's loading port** which would in turn affect the arrival at the customer's discharge port and thus impact the customers' ability to avail themselves of the pulp. This essentially implies that this GTR clause at that time would have (a) only applied to CIF/CFR terms of sale and (b) would have referenced a single vessel contract? In current times contracts are (a) generally on an annual basis (or multi-year) and (b) typically are supplied from stocks in designated ports.

At issue therefore if one assumes that the old clause is effectively redundant, is how does one now include a clause in the GTR that holds the pulp supplier **responsible for the delivery of pulp** as promised, when in fact the carriers (i.e. the vessel and its owners /operators) are 3rd parties, over which the pulp suppliers have absolutely no control whatsoever ?!

To then add a compensation penalty, payable by the supplier, in what is essentially an uncontrollable scenario, is simply unworkable from EPIS' point of view.

It was then debated whether a complete re-write of this clause should be done? Perhaps there should be two sub-elements to this clause ?

(a) Delivery delays due to vessels arriving late at the customers' discharge ports - and if so, what constitutes a significant delay? Is it really 7 days or would 21 days be more meaningful and realistic?

(b) Non-delivery or service failures on a local/domestic basis. If so, how then does one actually indemnify the customer ? Again, what is the time frame that triggers a deemed service failure ? A week, 2 or 3 weeks? However, in order for this to be meaningful it was suggested that if suppliers are to be in any way liable, the customer would need to **(i)** supply a solid, reliable forecast and **(ii)** have a firm obligation to take the pulp! This cannot be perceived to favour only one party.

Clause 13 & 14 : Applicable Law and Arbitration

UTIPULP want this to be in the buyer's country and, if the place of arbitration is not agreed, then it should be conducted in Belgium.

EPIS in the first instance rejects this, asserting that, in reality, the whole transaction process and performance under the sales contract, remains the (sole) responsibility of the supplier **up to the point** where the pulp is delivered. It is EPIS' understanding that the Rome Convention states that, unless specified and agreed otherwise, the seller's country laws are normally considered the most relevant laws to use.

Hence any contract and legal relations (and arbitration entered into), should be conducted in the **supplier's** country per the prevailing laws.

However, having said that, EPIS also suggests that by mutual agreement a supplier and a customer may, in fact, actually chose to conduct these legal actions in a 'neutral' 3rd country. One has to assume that there is a measure of trust between seller and buyer and that legal actions are typically only entered into as a last resort.