



Foreign Agricultural Service

GAIN Report

Global Agriculture Information Network

Voluntary Report - public distribution

Date: 12/06/1999

GAIN Report #GH9003

Ghana

Grain and Feed

The GOG Refuses to Pay for a Shipment of U.S. Corn 1999

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Report Highlights: This report details problem encountered by a U.S. exporter in receiving payment for a shipment of U.S. grain sold to the Government of Ghana. The U.S. exporter has sought relief through both Ghana and U.S. Courts but to date has not been paid. Unless the GOG makes payment shortly, Ghanaian assets could be attached in the United States and auctioned to enforce payment.

Includes PSD changes: No
Includes Trade Matrix: No
Unscheduled Report
Lagos [NI1], GH

DELTA FOODS' SALE OF CORN TO THE GOVERNMENT OF GHANA

In 1997, Dr. Kwabena Adjei, acting in his capacity as the Ghanaian Minister of Food and Agriculture (MOFA), entered into a contract on behalf of the Government of Ghana (GOG) with Delta Foods (Ghana) Limited to purchase 21,000 metric tons (420,000 50 kg. bags) of white corn imported from the United States. Delta Foods (Ghana) Limited imported the white corn from their principals, Delta Foods, Inc., Portland, Oregon. The corn has been kept in Delta Foods (Ghana) Limited's warehouse at Frafraha, on the outskirts of Accra. At the time of the contract, the price of the imported corn was 16.5 billion Cedis, approximately \$8.7 million.

After persistent demands for payment, Delta Foods (Ghana) Limited filed an action in the High Court of Ghana against Dr. Kwabena Adjei, the Ghanaian Minister of Food and Agriculture to enforce the contract. On August 27, 1998, after the non-performance of the contract by the GOG, Delta Foods (Ghana) Limited filed for summary judgement. The GOG/MOFA did not file an opposition brief, but instead asked for "an out-of-court" settlement of the case. Most observers interpreted this to represent a realization on the part of the GOG that it had no justification for its non-payment to Delta Foods (Ghana) Limited.

The High Court entered a judgement on behalf of Delta Foods (Ghana) Limited. The GOG/MOFA and Delta Foods (Ghana) Limited entered into a written settlement whereby the GOG/MOFA agreed to pay Delta Foods (Ghana) Limited 20.3 billion cedis for the value of the shipment plus damages, maintenance costs, interest, and legal fees. The settlement agreement was filed with the Ghanaian High Court by the parties involved. Based on this, the High Court entered a final judgement in favor of Delta Foods (Ghana) Limited, based upon the terms of the settlement.

Despite this consent judgement, the GOG/MOFA failed to pay Delta Foods (Ghana) Limited. Delta Foods notified the GOG/MOFA on December 30, 1998, that it intended to file in the U.S. Court system for enforcement of the consent judgement of the Ghanaian High Court. Following this, the Solicitor General of Ghana filed an application in the Ghanaian Supreme Court to quash the judgement of the Ghanaian High Court on the grounds that the Ghanaian Attorney General should have been named as a defendant in the case. On March 3, 1999, the Ghanaian Supreme Court unanimously upheld the judgement of the Ghanaian High Court, and awarded an additional 5 million cedis in costs to Delta Foods (Ghana) Limited.

The GOG/MOFA still refused to pay. On April 14, 1999, Ghana's Solicitor General again filed a motion with Ghana's High Court to set aside the judgement of the Supreme Court on the grounds of fraud. The GOG/MOFA alleged that executives of Delta Foods (Ghana) Limited fraudulently induced Dr Kwabena Adjei, the then Ghanaian Minister of MOFA, to agree to purchase the imported corn by "bribing" him with twenty (20) bags (50 kilograms each) which had been intended as samples for laboratory testing. Delta Foods (Ghana) Limited is also alleged to have wrongly informed MOFA that the sale had been approval by Ghana's Vice President.

This action of the Solicitor General also was dismissed by the High Court on August 19, 1999, on the grounds that the fraud was non-existent. The GOG/MOFA was therefore ordered by the High Court to pay Delta Foods (Ghana) Limited. The GOG/MOFA has appealed the High Court's ruling.

On January 8, 1999, Delta Foods (Ghana) Limited filed a suit in the United States District Court for the District of Columbia, seeking to enforce the judgement of both the Ghanaian High and Supreme Courts. The suit requested approval to attach the assets of the GOG in the United States. These assets would be auctioned, with the proceeds being used to pay Delta Foods (Ghana) Limited.

On October 7, 1999, the United States District Court for the District of Columbia ordered a dismissal of the defendant's motion and granted the plaintiff's motion for summary judgement. The court ordered that the final judgement that Delta Foods (Ghana) Limited obtained from the Ghana High and Supreme Courts in Ghana be recognized and enforced. Judgement was entered in the amount of \$8,787,879. Delta Foods is also to receive payment for interest costs, to accrue from October 15, 1998, until the date the Ghana judgement was entered, until the date the judgement is satisfied. The U.S. District Court also ordered that the execution of the present judgement be stayed for thirty days, during which time the GOG/MOFA may arrange for appropriate security to be deposited in an escrow account. If such security is arranged, the GOG may apply to the U.S. District Court to continue the Stay of Execution.

The GOG/MOFA began selling the imported corn in October and has now sold 17,700 tons to local poultry farmers. The GOG's sale price for this corn is 10,000 cedis per 50 kg. bag instead of the initially programmed price of 37,000 cedis. The price reduction was necessary because of quality deterioration. The corn reportedly is not suitable for human consumption and therefore is being used for animal feed. Total proceeds from the sale of the corn will total less than half of the amount that the GOG is obligated to pay Delta Foods. Sale proceeds are being deposited into an account at the Agricultural Development Bank. To date, Delta Foods (Ghana) Limited has not received payment from the GOG.

Comment: Embassy Accra informs that the seizure of Ghanaian assets in the United States could occur based upon the previous ruling of the U.S. District Court..

Exchange Rate: 1\$ = 3,000 Cedis

END REPORT