
A Guide to Arbitration



THE AMERICAN SPICE TRADE ASSOCIATION

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TABLE OF CONTENTS

Introduction	Pages 3-4
Rules Governing the ASTA Arbitration Program	Page 4
• Initiation of Arbitration	Page 4
• Quality	Pages 4-5
• Default	Page 5
• Arbitrator(s)	Page 5
• Duties of the Arbitrators	Pages 5-6
• Hearings	Page 6
• Awards	Page 6
• Appeals	Page 7
• Fees	Pages 7-8
Appendix 1 – Sample Forms	Pages 9-16

Disclaimer

The American Spice Trade Association (ASTA) provides this Arbitration Program to be used voluntarily at the option of the parties to a spice trade transaction. ASTA provides this Program without warranties of any kind, either express or implied, including but not limited to warranties of (1) merchantability, (2) fitness for a particular purpose, (3) accuracy, (4) design, (5) usage, (6) quality, (7) performance, (8) compatibility, or (9) title. ASTA does not warrant the accuracy or completeness of the information contained in this document. The users of this document agree that their use of it and the information contained therein is at the users' sole risk and that ASTA shall have no liability to any person for any loss or damage arising out of their participation in the ASTA Arbitration Program. ASTA encourages users of the ASTA Arbitration Program to consult with appropriate legal counsel before participating in the Program.

A GUIDE TO ARBITRATION

Introduction

Arbitrations under Arbitration Program of the American Spice Trade Association (ASTA) resulting in an enforceable award must be conducted in strict observance of Article 75, Sections 7501 to 7514 of the New York Civil Practice Law and Rules (CPLR). This is commonly known as the New York Arbitration Law.

The New York Arbitration Law, among other provisions, requires a fair hearing, giving equal opportunity to claimant and defendant, the right of cross examination of witnesses, and impartial arbitrators who have no material or personal interest in the outcome of the arbitration.

To participate in an arbitration conducted under the ASTA Arbitration Program, at least one party must be a member in good standing of the American Spice Trade Association.

To have a controversy settled by arbitration conducted under the ASTA Arbitration Program requires the written agreement of both parties. This is given by the voluntary use in the transaction of one of the contracts of the American Spice Trade Association, or by a written submission to ASTA that the parties, one of whom must be an ASTA member, wish to submit to arbitration under the ASTA Arbitration Program.

If an ASTA contract is voluntarily used by the parties, the following arbitration clause incorporated in an accepted Broker's Confirmation Sales Note or Purchase Order is appropriate:

"This instrument constitutes a contract between the above-named seller and buyer. All Rules printed on the presently effective Standard _____ Contract of the American Spice Trade Association are made a part of this contract. All questions, controversies and claims arising out of or in connection with this contract and any controversies between a party hereto and the broker or agent relating to the payment of brokerage or commissions hereunder shall be submitted to arbitration under the auspices of the American Spice Trade Association. The arbitration shall be conducted under the Arbitration Rules and the provisions for Waiver of Personal Service as printed on the standard contracts of the American Spice Trade Association, in effect on date hereof and same are deemed incorporated herein."

Any alteration in the arbitration clause, as stated above, may raise questions as to the conduct of arbitration proceedings under the ASTA Program.

A contract or broker's signed confirmation must be in writing and accepted by the defendant (it need not be returned). Signature of all parties is not necessarily required.

Whenever a claimant submits a contract with a valid arbitration clause and demands arbitration, the American Spice Trade Association will proceed, even though the contract is not signed by the defendant.

The validity of a contract may be contested before a court (consult with an attorney), or the defendant called to arbitration may present his objections to the proceedings directly to the arbitrators.

Where there is no contract containing a valid arbitration clause or no agreement providing settlement of a dispute by arbitration, the parties to a controversy may request the settlement of the dispute through the ASTA Arbitration Program by submitting a signed "Submission." A Submission must be in writing and signed by the parties. ASTA requests that the Submission be signed by both parties so

as to assure that there is no misunderstanding regarding the Rules of the Association governing arbitration. A sample Submission is in Appendix 1. This Submission, when signed by the parties, must be filed with the American Spice Trade Association, and the applicable fee paid, as provided in the Rules, in order to institute proceedings under the Rules. (This Submission is generally applicable, but as the legal requirements for a valid Submission vary under different arbitration laws, it is necessary for the parties to ascertain the provisions of the applicable law before using this Submission Form.)

Rules Governing the ASTA Arbitration Program

The following rules shall govern all arbitrations held under contracts providing for arbitration under the rules of the American Spice Trade Association (ASTA), and for arbitrations not arising from the use of an ASTA contract when both parties have consented to participate in an ASTA arbitration by filing a valid Submission (See Appendix 1 for a sample form).

A. Initiation of Arbitration

A party demanding arbitration shall make a demand for same upon the adverse party, by a notice in writing, by registered or certified mail, return receipt requested (where that is possible), facsimile, or email or by personal service; identifying the contract and setting forth the nature of the dispute, and the provision of the contract alleged to have been breached. The amount claimed, to the extent ascertainable, shall also be set forth in writing.

A party demanding arbitration shall file with the American Spice Trade Association:

- a. A copy of the contract providing for arbitration under the rules of the American Spice Trade Association or in the case of a transaction not performed under an ASTA contract, a Submission indicating both parties' consent to arbitration.
- b. A copy of the demand sent to the adverse party
- c. The required fee as specified in Section I of these rules.

The adverse party may file an answering statement with the Association by mailing, sending by facsimile, or emailing a copy thereof to the party demanding arbitration. If no answer is filed, the claim will be deemed denied.

The arbitrator(s) may allow amendments of demand and/or answer.

B. Quality

Unless it can be shown that it was impossible to do so:

I. Arbitration of all disputes as to quality of merchandise and/or claims for allowances in price shall be demanded not later than fifteen (15) calendar days after the parcel is landed, stripped (if containerized), and FDA release notice has been issued, and/or from the date of the Certificate of Analysis or delivery order, whichever is applicable. Samples shall be drawn from the parcel within the same fifteen (15) calendar days.

2. In sampling merchandise for arbitration, the number of samples drawn shall be the same as the number required under ASTA Import Specifications in effect on the date of the contract.

3. Individual samples for arbitration shall be drawn from each applicable chop or invoice and sealed by a public sampler in the presence of representatives of both parties to the contract. Failure promptly to appoint a representative to supervise sampling shall be considered as a waiver of the privilege and samples drawn in good faith by order of the other party shall be used by the arbitrator(s).

Sealed samples shall be properly stored by the public sampler and retained by him until notified by ASTA of the date for the arbitration. At that time the samples will be delivered by the sampler to the location designated by ASTA.

C. Default

Whenever it shall be decided by arbitration that either party has failed to fulfill the terms of the contract, that party shall be deemed to be in default.

The arbitrator(s) shall award the actual damages resulting from the default. When these damages are not ascertainable with exactness, the arbitrator(s) may award against the party in default the difference between the contract price and the market value on the date of default (on the basis of contract weight without leeway), plus a sum not in excess of ten percent (10%) of the market value of the merchandise as established on the date of default.

The party in default shall not be permitted to benefit therefrom, and no award shall be rendered in favor of the defaulting party.

The decision of the arbitrator(s) shall be based on the evidence submitted and testimony given. However, the market value on the date of default may be determined at the discretion of the arbitrator(s).

D. Arbitrator(s)

Promptly upon receipt of a demand for arbitration, the ASTA office shall notify the Chairman of the Arbitration Board. The Chairman shall determine that the provisions of Paragraph A. have been met and then shall direct the ASTA office to dispatch to both parties a designated panel of arbitrators.

The ASTA Executive Director shall work with the Chairman of the Arbitration Board to assure that the arbitrator(s) have no potential conflict of interest regarding both parties to the arbitration.

Each of the parties may thereupon challenge any member of two firms on such panel 'without cause' and any number of persons 'with reasonable cause' which must be described.

In addition, in the case of a 3-member panel each party may indicate his order of preference of five (5) among the persons not challenged.

A copy of the panel membership shall be received by the ASTA office within fifteen (15) calendar days from its dispatch by ASTA.

Upon return of the panels or the expiration of time for their return, the Arbitration Board Chairman shall appoint a Sole Arbitrator or three (3) Arbitrators, one of whom shall be appointed as Chairman of the Arbitration Panel, whichever is applicable.

E. Duties and Jurisdiction of the Arbitration Board Chairman and Its Members

The Arbitration Board Chairman shall, in addition to selecting arbitrators, naming the Chairman of a 3-member panel and ruling on the validity of challenges 'with cause', as per Paragraph D., interpret the arbitration rules, determine all questions of jurisdiction in connection with arbitrations, provided that he shall not determine or decide any controversy or claim which the parties are submitting to arbitration.

The determination as to whether one arbitrator or three arbitrators will be appointed is to be made by the Arbitration Board Chairman who will take into account inter alia on reaching a decision:

- a. The size of the fee submitted by the applicant and/or
- b. the amount claimed by the demanding party-generally claims above US\$5,000 will be heard by three (3) arbitrators - and/or
- c. any other reason which he considers pertinent to the demand received by ASTA.

The Arbitration Board Chairman also may, in his discretion, refer to the arbitrator(s) any questions or issues which in his judgment should properly be so referred.

The Arbitration Board Chairman shall consult the other two (2) members of the Arbitration Board in all questions of Appeal (Paragraph H.), and the Board shall then act by majority vote.

F. Hearings

The Arbitration Chairman or Sole Arbitrator shall appoint a time and place for the hearing, and the ASTA office shall notify the parties by registered or certified mail, fax or email, confirmed in writing by registered or certified mail, not less than fourteen (14) calendar days before the hearing.

Upon written request of either of the disputants an official stenographic record of the evidentiary portion of the hearing shall be permitted. The cost for such stenographic record shall be borne by the party requesting it. A copy of the record shall upon request be made available to the other party for half the cost of the stenographic record.

The Chairman or Sole Arbitrator shall work with the ASTA staff to assure that all relevant documents and evidence to be used in the arbitration are provided to both parties at least five (5) days prior to the arbitration.

In all arbitrations and appeals or hearings the arbitrator(s) and members of the Arbitration Board shall, before acting, subscribe to the usual legal oath of office. In all arbitration and appeal hearings all principals, representatives, and witnesses giving oral evidence shall be duly sworn in the usual manner.

G. Award

1. The award shall be mailed by ASTA to the parties by registered or certified mail. The award shall be final and binding on the parties unless a request for appeal of the award is received by ASTA within thirty (30) calendar days of the date of the mailing of the award. This request must be accompanied by the fee as specified in Paragraph I. In addition, within the same thirty (30) calendar days, a party requesting appeal of an award which calls for a payment to the winning party must remit fifty percent (50%) of the amount of the award of which an appeal is requested (see G.2 below). A winning party requesting appeal of an award which it considers to be insufficient remedy shall remit only the fee for appeal (see Paragraph I).

All parties involved shall be notified promptly by ASTA of the receipt of such timely request for appeal.

2. The fifty percent (50%) shall be payable to the "ASTA Arbitration Escrow Account". If the request for appeal is denied, the amount then on deposit shall be paid to the party in whose favor the award was rendered, as payment on account of the awarded amount, provided that party certifies to ASTA that no application to vacate or modify the award has been made during the ninety (90) days after the delivery of the award to the depositing party.

If the original award is confirmed, overturned, or modified by the Arbitration Board, any deposits exceeding the depositor's resulting indebtedness shall be returned promptly. If the hearing results in an award exceeding the deposit, it shall serve as payment on account of the amount due thereon.

H. Appeals

One appeal per case is permitted (in accordance with the provisions specified in Paragraph G.) only for stated error or omission. The Arbitration Board shall decline to grant an appeal of an arbitration award whenever it finds that the sole basis of the request for appeal is quality of merchandise alone or the amount of the allowance awarded by reason thereof.

The party requesting an appeal must file with ASTA four (4) copies of a sworn statement or a sworn brief together with certification of transmittal of a copy thereof to the other party. These must be received by ASTA within forty (40) calendar days of the date of the mailing of the award. The other party may also file a sworn response, in quadruplicate. This response must be received by ASTA within twenty (20) days of the date of receipt by ASTA of the appellants brief, together with certification of transmittal of a copy thereof to the other party.

If the Arbitration Board finds the request for appeal to be based upon insufficient evidence of error or omission, it may decline to grant an appeal of the case. In that event, the fee, less fifty percent (50%), will be returned to the appellant. Otherwise, in its discretion, the Board may request an amended sworn statement from either disputant in case of error or for clarification. This document must be received by ASTA within thirty (30) days of the Board's request for it, or the Board will act without it.

An appeal shall be heard by three members, chosen by the Arbitration Board Chairman, from the Arbitration Board or Alternate Members of the Arbitration Board. Those hearing the appeal shall have the option to invite an original arbitrator(s) to the appeal hearing.

Unless it declines to grant the appeal, the Arbitration Board is empowered to sustain or alter the original award. The decision of the Board, by majority, shall be final and binding.

I. Fees

The fee for each arbitration shall be:

Sole Arbitrator
 Member \$1,000
 Non-member \$2,000

Panel of Three Arbitrators
 Member \$1,500
 Non-member \$3,000

Appeal
 Member \$1,500
 Non-member \$3,000

The fee for an arbitration shall be assessed against the losing party. Where the losing party has offered in writing, prior to the hearing, a settlement that is held by the arbitrator(s) to be sufficient, but which was refused, the fee shall be paid by the refusing party.

The fee for an appeal, if granted by the Arbitration Board, shall be retained by ASTA.

If the Arbitration Board declines to grant an appeal, fifty percent (50%) of the fee paid by the appellant shall be returned.

Where a demand for an arbitration is withdrawn by letter, facsimile, or email received by ASTA prior to the expiration of the time for the return of the panel, the fee paid shall be refunded less fifty percent (50%). In the event of the withdrawal of an arbitration any time prior to four (4) calendar days before the scheduled date of the first hearing, the fee paid shall be refunded less seventy-five percent (75%), which is to be retained by ASTA. Withdrawal thereafter will result in forfeiture of the entire fee.

Appendix 1 - Sample Forms

1. Sample Form for Submission When Parties Did Not Use an ASTA Contract

AMERICAN SPICE TRADE ASSOCIATION

In the Matter of the Arbitration between :
: SUBMISSION
_____:

WE, THE UNDERSIGNED PARTIES, hereby agree to submit to arbitration under the Rules of the American Spice Trade Association the following controversy:

WE further agree that the above controversy shall be submitted to the arbitrator(s) selected in accordance with the Rules as described in the ASTA document "A Guide to Arbitration."

WE further agree that we will faithfully observe this agreement and the Rules and that we will abide by and perform any Award rendered pursuant to this Agreement (and that a judgment of the Supreme Court of the State of New York may be entered upon the Award).

WE further agree that our use of and participation in this arbitration is at our sole risk and that ASTA shall have no liability to any person for any loss or damage arising out of our use of the arbitration process. We acknowledge that ASTA encourages users of this arbitration process to consult with appropriate legal counsel before engaging in arbitration.

Each party to this contract hereby consents that any papers, notices or process necessary or proper for the continuation of an arbitration proceeding, for the confirmation of an award, for the entry of judgment on an award made, or otherwise required to be given by law or under the rules hereinabove described, including notices as to reviews, may be given or served upon such party (a) by ordinary, certified or registered mail (air mail if destination is outside the Continental United States), addressed to such parties: last known address; or (b) by personal service within or without the State of New York, or within or without the limits of the jurisdiction of the Court having jurisdiction in the premises (whether such party be within or without the United States of America); or (c) where a party to a controversy is not located in the City of New York, by mail or personally, as provided in (a) and (b) hereof, upon his agent or broker through whom the contract was made; provided that a reasonable time shall be allowed such party to appear and defend.

Signed: _____
(Name of Party)
By: _____

Address: _____

DATED:
Signed: _____
(Name of Party)
By: _____

Address: _____

2. Sample Form for Submission for Arbitration on Default Regarding Adverse Party Seller

To be provided to the adverse party when that party is a **SELLER** and a claim of default is made.

Date _____

Name and Address of Adverse Party

Gentlemen:

We purchased from you, as per Contract No. _____ dated _____, covering _____ tons of _____ at _____ cents per lb., shipment _____ from _____.

As no shipment was made under this contract, you are in default. We claim arbitration under the arbitration clause in this contract and demand an amount of \$_____. We have asked the American Spice Trade Association to proceed with the arbitration as provided in the Rules for as described in the ASTA document "A Guide to Arbitration."

You are hereby notified that, unless within twenty days you apply to stay the arbitration pursuant to CPLR Section 7503, you shall be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time.

Very truly yours,
(Signed:) Party demanding arbitration

cc: ASTA

3. Sample Form for Submission for Arbitration on Default Regarding Adverse Party Buyer

To be provided to the adverse party when that party is a **BUYER** and a claim of default is made.

Date _____

Name and-Address of Adverse Party

Gentlemen:

We sold you, as per Contract No. _____ dated _____ covering _____ tons of _____ at _____ cents per lb., shipment/delivery _____ during _____.

As (no Letter of Credit was opened)(no payment was made) in accordance with the terms of this contract, we are declaring you in default of same. We claim arbitration under the arbitration clause in this contract and demand an amount of \$____. We have asked the American Spice Trade Association to proceed with the arbitration as provided in the Rules as described in the ASTA document "A Guide to Arbitration."

You are hereby notified that unless within twenty days you apply to stay the arbitration pursuant to CPLR Section 7503 you shall be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time.

Very truly yours,

(Signed:) Party demanding arbitration

cc: ASTA

4. Sample Letter to Advise ASTA Regarding an Arbitration for Default

Sample letter to be written to the American Spice Trade Association where a claim of default is made.

Date _____

American Spice Trade Association, Inc.
1101 17th Street NW, Suite 700
Washington, DC 20036

Gentlemen:

We enclose a copy of our letter to _____, dated _____, advising that we have filed an application for arbitration, sent them by registered (or certified) mail. We have proof of mailing.

Also enclosed is a copy of Contract No. _____ dated _____ as well as our check in the amount of \$_____, and we request that you proceed with the necessary requirements under the Rules as described in the ASTA document "A Guide to Arbitration."

Very truly yours,
(Signed:) Party demanding arbitration

cc: Adverse Party

5. Sample Form for Submission for Arbitration Regarding Quality

NOTE: Please see Section B of the Rules regarding requests for arbitration involving quality.

Sample letter to the **SELLER** whenever the controversy involves quality.

Date _____

Name and Address of Adverse Party

Gentlemen:

We refer to Contract No. _____ dated _____ covering the purchase of _____ tons of _____.

Upon arrival and after examination, we find that the merchandise delivered is not of the quality described in the contract. We are therefore entering a claim against you and are demanding arbitration under the terms of the contract before the American Spice Trade Association and are asking it to set a date and time for the hearing of this controversy. We have appointed _____ to draw the necessary samples. Please have your representative contact them, if you wish to arrange for supervision of sampling.

You are hereby notified that unless within twenty days you apply to stay the arbitration pursuant to CPLR Section 7503, you shall be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time.

Our claim is for \$_____ representing the difference in price between _____ and _____.

Very truly yours,

(Signed:) Party demanding arbitration

cc: ASTA

6. Sample Letter to Advise ASTA Regarding an Arbitration for Quality

Sample letter to be written to the American Spice Trade Association if quality is involved.

Date_____

American Spice Trade Association, Inc.
1101 17th Street NW, Suite 700
Washington, DC 20036

Gentlemen:

We attach herewith a copy of ASTA Contract No. _____, dated _____, copy of a letter addressed to the seller demanding arbitration, and a check in the amount of \$_____, as provided for under the Rules for arbitration. The letter enclosed was sent by registered (or certified) mail, and we have proof of mailing.

The seller supplied _____ tons against the aforesaid contract the quality of which is considered to be inferior to the quality described in the contract. We therefore demand arbitration, and we ask that you appoint the arbitrators and set the date and time for arbitration. Official Samples were drawn and sealed by _____.

Very truly yours,
(Signed:) Party demanding arbitration

cc: Adverse Party

7. Sample Letter to Request an Appeal by the Prevailing Party of an Award Which It Considers to be an Insufficient Remedy

Sample of a request for Appeal to be written to the American Spice Trade Association when the Award is considered to be an insufficient remedy:

Date _____

American Spice Trade Association, Inc.
1101 17th Street NW, Suite 700
Washington, DC 20036

Gentlemen:

In regard to Arbitration Award No. _____ dated _____ we hereby request an Appeal as provided for in the ASTA document "A Guide to Arbitration."

Enclosed please find four (4) copies of a sworn statement or a sworn brief stating the error or omission along with certification of transmittal of a copy to the other party.

Also enclosed is our check in the amount of \$_____ in accordance with the Arbitration Rules in effect.

Very truly yours,
(Signed:) Party requesting Review

cc: Adverse Party - Via Certified (or Registered) Mail

8. Sample Letter to Request an Appeal of an Award Which Calls for Payment to the Prevailing Party

Sample of a request for Appeal to be written to the American Spice Trade Association when the Award calls for payment to the Prevailing Party:

Date _____

American Spice Trade Association, Inc.
1101 17th Street NW, Suite 700
Washington, DC 20036

Gentlemen:

In regard to Arbitration Award No. _____ dated _____ we hereby request an Appeal as provided for in the ASTA document "A Guide to Arbitration." Enclosed please find four (4) copies of a sworn statement or a sworn brief stating the error or omission along with certification of transmittal of a copy to the other party.

Also enclosed is our check made payable to "ASTA Arbitration Escrow Account" in the amount of \$_____, which covers fifty percent (50%) of the amount of the award. Additionally, enclosed is the fee for appeal in accordance with the Arbitration Rules in effect.

Very truly yours,
(Signed:) Party requesting Review

cc: Adverse Party - Via Certified (or Registered) Mail