



Nut Industry Response to Defaults

Michael Waring
**Vice Chair - INC International
Nut and Dried Fruit Foundation**

2017 Australian Nut
Conference

27 - 29 March 2017
Pullman, Melbourne, Albert Park



Members

- 727 Companies
- 72 Countries



- Growers
- Processors
- Manufacturers
- Traders
- Distributors
- Machinery companies
- Packers
- Laboratories
- Consultants
- Associations



- Members
- Ambassadors
- Chennai 2017

INC aims for:



- Being the international source of information on health, nutrition, statistics, food safety, government standards and regulations regarding trade barriers and agricultural quality standards.

Information Resources

Helping the N&DF industry grow.

Industry's voice

- Cooperating with national and international institutions, such as Codex Alimentarius and UN, to further global N&DF trade.

- Increasing the understanding about production, trade and consumption trends worldwide.

Statistics

Health & Nutrition

- Promoting scientific research on the health benefits of N&DF consumption.

Industry's Umbrella

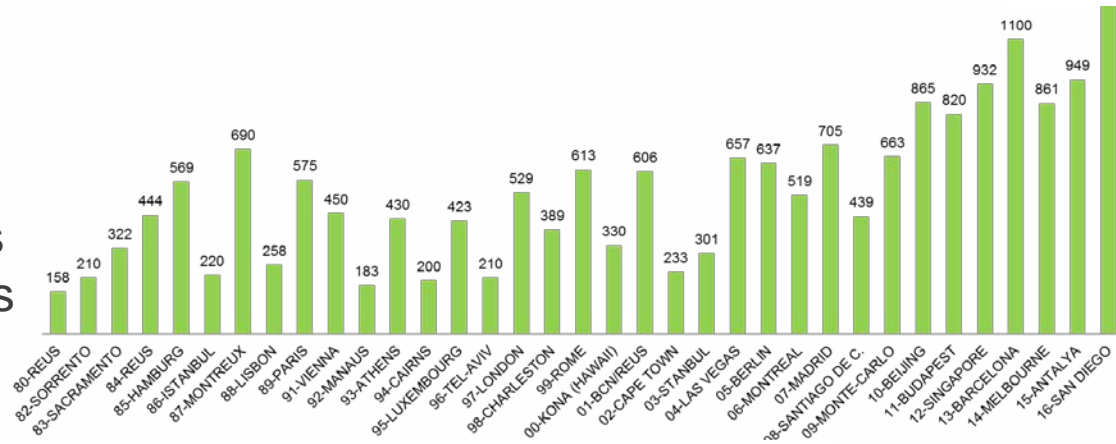
- Food safety, agricultural quality standards, trade barriers, border rejections, etc.
- Codex Alimentarius, FAO, WHO, WTO, UNECE, EU, USDA, FDA, CCCFNA, etc.



World Nut and Dried Fruit Congress



Since 1980
100's of companies
Avg of 1000 participants
60 countries
20 round tables, seminars
and keynote presentations
60 speakers



The world's greatest N&DF event.

- A unique platform for participants to learn, network, and share knowledge and ideas.
- Industry's top leaders and experts.

Member Forum



- INC Hosted a Member Forum in San Diego at the Congress
- The member forum included panel members:
 - Giles Hacking
 - Argo Dermenjian
 - Michael Waring (Chair)
 - Andrew Wanger – USA Lawyer to assist with the panel
- Question and answer session
 - The Most Attended Session of the Congress – estimated 1,000 plus

Why A Forum?

- Response to the significant number of INC members affected by business defaults
- Not a new phenomenon to participants in particular nut and dried fruit sectors
- Recent impact on USA Walnut and Almond exporters combined with highly attended USA congress in San Diego.



Member Forum – San Diego 2016



- Examples (Actual) Questions the Panel:

- What should we do if we see defaulters at a Congress?
- Do you think that an official contract promoted by INC could be worthwhile?
- Will the INC expel/ black ball known defaulters?
- Will the INC rescind membership and reject members who are deemed (or found to be) to have defaulted on business with other members?
- Can INC expel a member if an arbitration judgement has been made against them?
- What actions taken against those who made huge default and hurt the almond industry? Why cannot take action, cannot take the action against international shipper but can take against “USA Trader”?
- Can you discuss contract signatures: Clause about “receipt of contract & non acknowledgement constitutes acceptance of contracts”. Issue about who signed contract & how to rectify that they are authorised to sign?
- What is the validity of a contract that mentions: Valid in all terms if not returned signed in X days... and it never came back signed?
- What are the reasons why irrevocable letters of credit can't be used more effectively to ensure payment at contracted terms?

Member Forum



- Message from members blunt and clear:

INC members expect a base code of conduct be followed by fellow members.

Defaulting businesses and their Directors are not welcome as members of INC or at the INC Congress

INC will recognise particular Arbitration Jurisdictions

Considering how to interpret “Court Findings and Jurisdictions”

Change in INC By-Law



- In October 2016 the Board of Trustees unanimously agreed to amendment of the INC by-law Article 3:

- “Founding Aims of the Foundation” inserting new item 8 –

- “To promote integrity and good business practices in the nut and dried fruit sector”.

Arbitration



- **Considering / Noted:**
- **Waren-Verein der Hamburger Borse:** (Hamburg, Germany)
- **Grain and Feed Trade Association (GAFTA):** (London, UK). International trade association operating an international dispute resolution service for contractual disputes.
- **Federation of Oils, Seeds and Fats Associations (FOSFA):** (London, UK). Professional international contract issuing and arbitral body concerned exclusively with the world trade in oilseeds, oils and fats.
- **International Court of Arbitration of the International Chamber of Commerce (ICC Court):** (Brussels, Belgium).
- **Nederlandse Zuidvruchten Vereniging (NZV):** (Zoetermeer, Netherlands).
- **Santiago Arbitration and Mediation Center (CAM Santiago):** (Santiago, Chile). Non-profit institution within the Santiago Chamber of Commerce (CCS) that offers arbitration and mediation for the resolution of domestic and international disputes.
- **The Nut Association (TNA):** (Essex, UK). It provides an arbitration procedure in the event of a dispute arising between contracted parties.
- **Association of Food Industries (AFI) Arbitration Service:** (Neptune, NJ, USA).
- **Indian Council of Arbitration (ICA):** (New Delhi) Specialized arbitral body at the national level under the initiatives of the Govt. of India and the Federation of Indian Chambers of Commerce and Industry (FICCI) aiming to promote settlement of commercial disputes by means of arbitration and conciliation, regardless of location.

Arbitration



- **Others Considering:**

- **The Arbitration and Conciliation Act, 1996 (Indian Bare Acts no.26 of 1996).**

- **International Institutions:**

- **Arbitration Institute of the Stockholm Chamber of Commerce:** (Stockholm, Sweden). Independent Institute within the Stockholm Chamber of Commerce (SCC) that provides dispute resolution services for both Swedish and international parties.
- **Australian Centre for International Commercial Arbitration (ACICA):** (Head office in Sydney, also offices in Melbourne and Perth, Australia). Non-profit organization aimed to promote and facilitate the resolution of commercial disputes throughout Australia and internationally.
- **British Columbia International Commercial Arbitration Centre (BCICAC):** (Vancouver, Canada) Non-profit organization offering alternative dispute resolution services to the commercial and international community.
- **Cairo Regional Centre for International Commercial Arbitration (CRCICA):** (Cairo, Egypt). Non-profit international organization within the Asian African Legal Consultative Organization (AALCO).
- **Chamber of Arbitration of Milan:** (Milan, Italy). Branch of the Chamber of Commerce of Milan specialized in commercial dispute resolution.
- **China International Economic and Trade Arbitration Commission (CIETAC):** (Beijing, China). Institution that offers resolution to economic and trade disputes by means of arbitration.

Arbitration

- **European Court of Arbitration:** (**Strasbourg**, France for Central and Northern Europe and **Milan**, Italy for Southern and Eastern Europe, the Mediterranean and the Middle East). Branch of the European Centre of Arbitration and Mediation which administers international and domestic arbitration in Europe, including Eastern Europe, the Mediterranean, the Middle East and the Black Sea countries.
- **Hong Kong International Arbitration Centre (HKIAC):** (Hong Kong). Non-profit organization specialized in arbitration, mediation, adjudication and domain name disputes resolution.
- **International Centre for Dispute Resolution (ICDR):** (offices throughout U.S). Global component within the American Arbitration Association (AAA), a U.S. based non-profit organization, providing dispute resolution services to individuals and organizations.
- **International Chamber of Commerce (ICC):** (Paris, France). Dispute resolution services provided by the ICC organisation for individuals, businesses, states, state entities and international organisations.
- **Japan Commercial Arbitration Association (JCAA):** (Head office in Tokyo, Japan and more offices throughout the country). Commercial arbitral institution for the resolution of disputes arising from international and domestic business transactions.
- **London Court of International Arbitration (LCIA):** (London, UK). International institution for commercial dispute resolution.



Arbitration

- **Netherlands Arbitration Institute (NAI):** (Rotterdam, Netherlands). Non-profit organization aiming to promote different types of alternative dispute resolution.
- **Permanent Court of Arbitration (PCA):** (The Hague, Netherlands). Intergovernmental organization providing dispute resolution services to the international community.
- **Singapore International Arbitration Centre (SIAC):** (Singapore, also office in Mumbai, India) Non-for-profit organization that provides arbitration services to the global business community.
- **Swiss Arbitration Association (ASA):** (Geneva and Zurich, Switzerland). Non-profit association engaged in domestic and international arbitration.
- **Viena International Arbitral Centre (VIAC):** (Vienna, Austria). Arbitral institution of the Austrian Federal Economic Chamber (AFEC) that serves as a focal point for the settlement of commercial disputes in the regional and international community.





- INC and BIC encourage all Members to seek advice in regards to contract formation, enforceability, and relevant dispute settlement mechanisms.
- Correct and basic contract structure will assist in enforceability between buyer and seller.
- “Know your Customer” or “Know your Supplier”

- Even in the grip of a communications revolution-
Basic law fundamentals have not changed.

Offer

Acceptance

Consideration

- WeChat
- WhatsApp
- Viber

- Record of Negotiation?
- Final Confirmation?
- Effect on dispute resolution?



- The INC will continue to provide an exceptional opportunity to grow your contacts and relationships and this within an environment conducive to and under a membership code of conduct that will make you proud to be a member, and sought after as a partner in business

Business Integrity Committee

Defaulting businesses and their Directors are not welcome as members or at the INC Congress.

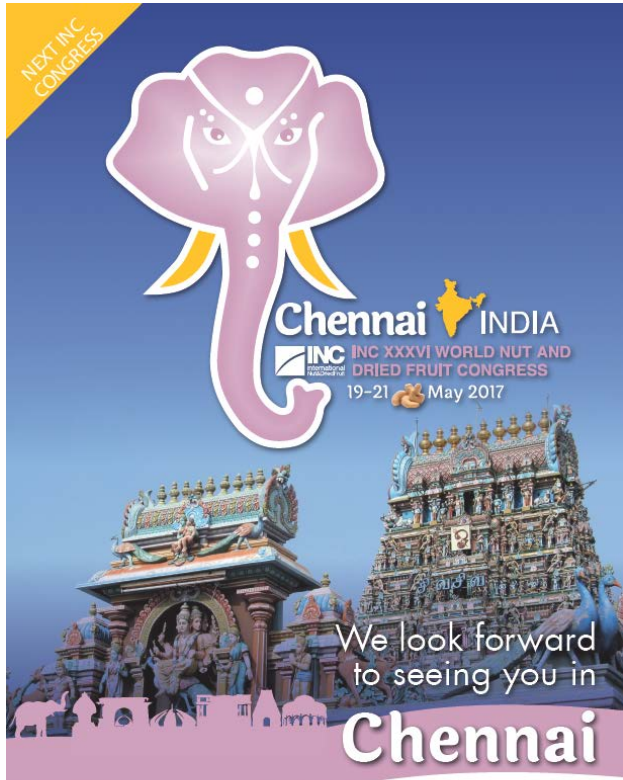
BIC consists of INC Board Members:

- Michael Waring (Committee Chair)
- Stephen Meltzer (Chairman of the INC Ambassadors Committee)
- Karsten Dankert (Board)
- Pratap Nair (Board)
- Giles Hacking (Board)
- Mark Mariani (INC Chairman)
- Goretti Guasch (INC Executive Director).

- INC members expect a base code of conduct to be followed by fellow members.
- Members need to conform to a base standard of integrity, especially in regards compliance with directions of arbitration and judiciary acknowledged in their contracts.
- INC is within its rights to expel and/or not accept companies/individuals that do not comply with these decisions.
- BIC will advise INC on defaults, industry integrity issues and review the impact on members. BIC will specifically recognise The Nut Association (UK), AFI (USA), Waren-Verein (Germany), and will consider other jurisdictions.
- INC and BIC encourage all members to seek advice in regard to contract formation, enforceability and relevant dispute settlement mechanisms. Correct and basic contract structure will assist in enforceability between buyer and seller.



Chennai 2017



The meeting point for the nut and dried fruit industry to seek business opportunities, learn and network.

www.nutfruitcongress.org



Questions



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