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SVEA COURT OF APPEAL	**DECISION**	Case No.
Department 8	7 September 2001	T 4645-99
	Stockholm	Division 34

CLAIMANT

Planavergne S.A., Fontanes, FR-46230 LALBENQUE, France

Counsel: Advokat Magnus G. Graner, Box 14240, 104 40 STOCKHOLM

RESPONDENT

Kalle Bergander i Stockholm AB, Reg. No. 556516-0149, P.O. Box 2095, 114 03 RÖNNINGE

Counsel: Advokat Henrik Wollsén, Box 7315, 103 90 STOCKHOLM

MATTER

Enforcement of arbitral award

DECISION OF THE COURT OF APPEAL

1. The Court of Appeal declares the arbitral award given on 1 July 1997, by the arbitral tribunal Chambre Arbitrale Internationale pour les Fruits et Légumes in Strasbourg (see appendix A and B) between Planavergne S.A. and Kalle Bergander i Stockholm AB – with the exception of the final bullet point of item 1 of the operative part of the award – enforceable as an unappealable judgment given by a Swedish court, provided, however, that the Supreme Court following appeal of this decision does not decide otherwise.

2. The Court of Appeal dismisses Planavergne S.A.'s motion that the last bullet point of item 1 of the operative part of the award shall be declared valid in Sweden as an unappealable judgment given by a Swedish court.

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3. the Court of Appeal dismisses Planavergne S.A.'s and Kalle Bergander i Stockholm AB's claims for compensation for litigation costs.

MOTIONS ETC. BEFORE THE COURT OF APPEAL

Planavergne S.A. (hereinafter Planavergne) has moved, as finally determined, that the Court of Appeal shall declare the arbitral award given on 1 July 1997, by the arbitral tribunal Chambre Arbitrale Internationale pour les Fruits et Légumes in Strasbourg (see appendix A and B) between Planavergne S.A. and Kalle Bergander i Stockholm AB (hereinafter Bergander) – with the exception of the final bullet point of item 1 of the operative part of the award – enforceable as an unappealable judgment given by a Swedish court. With respect to the final bullet point of the operative part of the award, Planavergne has moved that it shall be declared valid in Sweden as an unappealable judgment given by a Swedish court.

Bergander has disputed Planavergne's motions.

The parties have claimed compensation for their respective litigation costs before the Court of Appeal.

Bergander's representative KB has been heard under oath upon Bergander's request. Both parties have referenced documentary evidence.

BERGANDER'S OBJECTIONS TO PLANAVERGNE'S APPLICATION

Bergander has referenced and provided details for mainly the following objections – to which Planavergne has responded – to Planavergne's application. Bergander did not have an agreement with Planavergne and is consequently not bound by an arbitration agreement with Planavergne. In any event Bergander has not entered into an agreement entailing that Chambre Arbitrale Internationale pour les Fruits et Légumes was appointed as the arbitral tribunal for possible disputes. Bergander disputes that the circumstances upon which the arbitral tribunal based its decision on jurisdiction are at hand. Further, enforcement of foreign arbitral awards in Sweden requires the arbitration agreement to be in writing. The costs of the

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arbitration proceedings have not been specified in the arbitral award (final bullet point of the operative part of the award), and as a result, the arbitral award is not enforceable at all in this respect. Planavergne is further not entitled to compensation for its litigation costs. In addition, the order to compensate Planavergne for ancillary costs in the arbitration proceedings set out in the arbitral award goes beyond what Planavergne claimed (final bullet point of the operative part of the award). Planavergne's claim for compensation for costs and ancillary costs in the arbitration proceedings cannot be recognized or enforced, because the arbitral tribunal in these respects (final bullet point of the operative part of the award) exceeded its jurisdiction. The parts of the arbitral award that do not relate to payment of specific amounts cannot be enforced and should not be recognized.

GROUNDS OF THE COURT OF APPEAL

The matter

Bergander's [*sic!*] application for enforcement relates to an arbitral award rendered in Strasbourg, France. It must be deemed undisputed between the parties that Bergander has not applied for a summons in France or in any other country for the annulment of the arbitral award or that its enforcement shall be suspended until further notice. The application for enforcement has been made after the entry into force of the Swedish Arbitration Act (SFS 1999:116). Section 2 of the transitional provisions to that Act provides that the Act shall apply to the application. Further, Section 52 of the Act provides that the arbitral award shall be considered a foreign arbitral award.

Section 53 of the Swedish Arbitration Act provides that a foreign arbitral award, based on an arbitration agreement, is recognized and enforced in Sweden, unless otherwise provided in Sections 54-60.

Bergander has objected that the parties have never entered into an arbitration agreement. The first paragraph of section 58 of the Swedish Arbitration Act provides that Planavergne therefore shall prove that an arbitration agreement

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has been entered. The Court of Appeal finds that the question of whether an arbitration agreement has been entered in this case shall be decided – pursuant to the principles governing the Act (cf. Section 48 and item 1 of Section 54 of the Act and item a of the first paragraph of Article V of the 1958 New York Convention on the Recognition and Enforcement of Arbitral awards) – under French law, since the arbitral award was rendered in France. Based on this conclusion, the Court of Appeal finds, based on what is noted in the arbitral award, that Planavergne must be deemed to have sufficiently established that the parties have entered an arbitration agreement as set out in the arbitral award.

For the review of Planavergne's motion that the relevant arbitral award – with exception for the final bullet point of the operative part of the award – shall be declared enforceable in Sweden, the Court of Appeal finds that Bergander has failed to establish any impediment preventing the enforcement as set out in Section 54 of the Swedish Arbitration Act. Further, the Court of Appeal does not find any impediment preventing enforcement as set out in Section 55 of the Act to be at hand. The Court of Appeal further finds no other reason to refuse enforcement of the arbitral award in the now relevant part. Thus, Planavergne's application shall be granted in this respect.

With respect to Planavergne's motion that the final bullet point of the operative part of the arbitral award shall be declared valid in Sweden as an unappealable judgment given by a Swedish court, the Court of Appeal finds that there are legal grounds in Section 56 of the Swedish Arbitration Act for applications that a court shall declare a foreign arbitral award enforceable, but that the Section does not provide legal grounds for a declaration of the nature sought by the now relevant motion. There are no other legal grounds for such a declaration. Thus, Planavergne's motion in this respect shall be dismissed.

Litigation costs

There are no provisions in the Swedish Arbitration Act or in the Swedish Code of Judicial Procedure or elsewhere that grants the right to compensation for litigation costs in applications before the Court of Appeal for the

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enforcement of foreign arbitral awards. Thus, the parties' motions on compensation for litigation costs shall be dismissed.

HOW TO APPEAL, see appendix C

Appeals to be submitted by [*date*] October 2001

[ILLEGIBLE SIGNATURES]

The decision has been made by: former Senior Judge of Appeal L.P., and Judges of Appeal G.R. (reporting Judge of Appeal) and U.K.

Unanimous.