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In an Opinion issued April 27, 2010, the United States Supreme Court held that arbitrators could not allow class arbitration where an arbitration clause is silent as to whether class arbitration is permitted. The decision in Stolt-Nielsen S.A. v. Animalfeeds Int'l Corp. is a significant blow to consumers and class action plaintiffs. The Supreme Court held that "imposing class arbitration on parties who have not agreed to authorize class arbitration is inconsistent with the Federal Arbitration Act."

The parties had agreed that the arbitration clause in their shipping agreement was silent on the question of whether class arbitration was permitted. The parties, thus, agreed to have their arbitration panel decide whether the arbitration clause permitted class proceedings. The arbitration panel construed the broad arbitration clause as permitting class arbitration. That decision was then appealed by the defendant shipping companies. The plaintiffs argued that the case was not ready for judicial review because the Federal Arbitration Act limits review of arbitral decisions to final "awards." In this case, the panel had decided only a preliminary issue of contract interpretation, had not certified a class, and had not issued an award in anyone's favor.

Justice Ginsberg's dissent in the 5-3 decision echoed those arguments. Writing for the majority, Justice Alito stated that the arbitration panel had "exceeded its powers" by adopting its own "policy choice" in favor of allowing class actions. A number of consumer advocates have criticized the decision and have expressed concern that the court has taken a major step toward allowing class action bans in all contracts.

Of note, the Stolt-Nielsen case involved large, sophisticated businesses. It remains to be seen whether the same result would follow in a case involving aggrieved consumers with small-dollar claims who would be unable to secure redress in the absence of a class action, either in civil court or an arbitral forum. In any event, the decision was a significant blow to plaintiffs and lawyers who desire to pursue class claims.