SIXTEENTH ANNUAL

WILLEM C. VIS EAST INTERNATIONAL COMMERCIAL

ARBITRATION MOOT

MARCH 31 – APRIL 7 2019

HONGKONG

MEMORANDUM FOR CLAIMANT

西安交通大學法学院

XI'AN JIAOTONG UNIVERSITY SCHOOL OF LAW

XIAN JIAOTONG UNIVERSITY SCHOOL OF LAW

ON BEHALF OF:	**AGAINST:**
PHAR LAP ALLEVAMENTO	BLACK BEAUTY EQUESTRIAN
RUE FRANKEL 1	2 SEABISCUIT DRIVE
CAPITAL CITY	OCEANSIDE
MEDITERRANEO	EQUATORIANA
CLAIMANT	**RESPONDENT**

YUAN MENG • JIANG XIANGYU • LIU YUXUA • WANG YITONG

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	CISG and the UNIDROIT Principles of International Commercial Contracts http://www.cisg.law.pace.edu/cisg/biblio/rimke.html Last access: 05 December 2018 cited as: Rimke
Fucci, Frederick R	Hardship and Changed Circumstances as Grounds for Adjustment or Non-Performance of Contracts – Practical Considerations in International Infrastructure Investment and Finance Transnational Dispute Management(2007) Cited as: Fucci
MJ Bonell	Force majeure e hardship nel diritto uniforme della vendita internazionale Diritto del Commercio Internazionale, 570 Cited as: Bonell
Elena Christine Zaccaria	The Effects of Changed Circumstances in International Commercial Trade Int'l Trade & Bus. L. Rev. 135 (2005) Cited as: Elena
Rimke Joern	Force Majeure and Hardship: Application in International Trade Practice with Specific Regard to the CISG and the UNIDROIT Principles

	of International Commercial Contract http://www.cisg.law.pace.edu/cisg/biblio/rimke.html Last Access: 05 December 2018 Cited as Rimke
Brunner Christoph	Force Majeure and Hardship under General Contract Principles – Exemption for Non-Performance in International Arbitration Austin (Wolters Kluwer) (2009) Cited as: Brunner
Müller Christoph	International Arbitration – A Guide to the Complete Swiss Case Law (Unreported and Reported) Köln (O. Schmidt)/Bruxelles (Bruylant)/Zürich/Basel/Genf (Schulthess) 2004 Cited as: Müller
Magnus Ulrich	Beyond the Digest: Part III (Articles 25-34, 45-52) Ferrari/Flechtner/Brand (eds), The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Unresolved Issues in the UN Sales Convention, München (Sellier) 2004, pp. 319 et seq. Cited as: Magnus
Schwenzer Ingeborg/Hachem Pascal	The CISG – Successes and Pitfalls, American Journal of Comparative Law

	(2009) pp. 457 et seq Cited as: Schwenzer/Hachem
Schwenzer Ingeborg	Force Majeure and Hardship in International Sales Contracts, Victoria University of Wellington Law Review (2008) Cited as: Schwenzer
CM Schmitthoff	The Export Trade - The Law and Practice of International Trade, 4th edn (1962) London: Stevens & Son, 100 Cited as: Schmitthoff
P Gallo	Eccessiva onerosith sopravvenuta e problemi di gestione del contratto in diritto comparato' sez civ, Digesto IV (1991) Cited as: Gallo
Huber, Ulrich	Die Schadensersatzhaftung des Verkäufers wegen Nichterfüllung der Nacherfüllungspflicht und die Haftungsbegrenzung des §275 Abs. 2 BGB neuer Fassung' In Festschrift für Peter Schlechtriem zum 70. Geburtstag Edited by Ingeborg Schwenzer & Günter Hager. Tübingen (2003) Cited as: Huber
Zweigert, Konrad & Hein Kötz	An Introduction to Comparative Law

	3rd edn. Oxford (1998) Cited as: Zweigert & Hein
Southerington Tom	Impossibility of Performance and Other Excuses in International Trade Publication of the Faculty of Law of the University of Turku, Private law publication series B:55 (2001) Cited as: Southerington
Perillo Joseph M	Force Majeure and Hardship under the UNIDROIT Principles of International Commercial Contracts, in Contratación internacional – Comentarios a los Principios sobre los Contratos Commerciales Internacionales del Unidroit, México (Universidad Nacional Autónoma de México/Universidad Panamericana) (1998) Cited as: Perillo
Schlechtriem Peter/Butler Petra	UN Law on International Sales – The UN Convention on the International Sale of Goods, Berlin (Springer) 2009 Cited as: Schlechtriem/Butler
Redfern and Hunter	Redfern and Hunter on International Arbitration (Sixth Edition) Oxford(2015)
Emmanuel Gaillard and John Savage	*International Commercial Arbitration*

INDEX OF CASES

ENGLAND	Union of India v. McDonnell Douglas Corp Commercial court 1993 Case No.: 2 Lloyd's Rep. 48 Cited as: Union of India v. McDonnell Douglas Corp
ENGLAND	Sonatrach Petroleum Corporation (BVI) v. Ferrell International Ltd Commercial court 4 October 2001 Case No.: EWHC 481 Cited as: Sonatrach Petroleum Corporation (BVI) v. Ferrell International Ltd
USA	Alimenta (U.S.A.), Inc. v. Gibbs Nathaniel (Canada) United States Court of Appeals for the Eleventh Circuit October 23, 1986 No. 85-8910 Cited as:Alimenta v. Gibbs Nathaniel
USA	Alimenta (U.S.A.), Inc. v. Cargill, Inc., 861 F.2d 650 United States Court of Appeals for the Eleventh Circuit December 8, 1988

	No. 87-8771 Cited as: Alimenta v. Cargill
Belgium	Scafom International BV v. Lorraine Tubes SAS, Hof van Cassatie, 19 June 2009, CISG-online 1963, http://cisgw3.law.pace.edu/cases/090619b1.html Cited as：Scafom International BV v. Lorraine Tubes SAS
Britain	British Movietonews Ltd v London and District Cinemas Ltd [1952] AC Cited as: British Movietonews v London and District Cinemas
Swiss	Reservoir case, Swiss Federal Tribunal 1999, BGE 45 II 386 (1919) Cited as: Reservoir Case
Italy	Bielloni Castello v. EGO SA, Corte di Appello (Appellate Court) Milan, Italy 11 December 1998, CISG-online 430 Cited as: Biellon v. EGO
Italy	Nuova Fucinati SpA (Avv. Bassi, Santamaria) v. Fondmetall

International AB (Avv. Bianchi, Ginelli, Rossi),
Tribunale Civile di Monza, Italy, 14 January 1993,
CISG-online 540
Cited as: Nuova v. Fondmetall

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ICC	Islamic Republic of Iran v. Cubic Defense Systems, Inc., ICC Award in Case n. 7365/FMS, 5 May 1997, ULR (1999) Cited as: Islamic v. Cubic
CCIRF	CCIRF Award on Case n. 229/1996 5 June 1997 CISG-online 1247
CCIRF	CCIRF Award on Case n. 302/1996 27 July 1999 CISG-online 779

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&	and
Art./Arts.	Article/Articles
Inc.	Incorporated
Prof.	Professor
Ltd.	Limited
v.	vers
p.	page
PO	Procedural Order
UNCITRAL	United Nations Commission on International Trade Law
Agreement	FROZEN SEMEN SALES AGREEMENT
LCIA	London Court Of International Arbitration
LCIA Arbitration Rules	London Court Of International Arbitration Rules,1 Oct 2014
UNIDROIT	International Institute for the Unification of Private Law
DAL	Danubian Arbitration Law
IBA	International Bar Association
IBA Rules	IBA Rules on the Taking of Evidence in International Arbitration, London, 29 May 2010
ICC	International Chamber of Commerce and Industry

1. STATEMENT OF FACTS

2. The parties to this arbitration are Phar Lap Allevamento (hereafter "CLAIMANT") and Black Beauty Equestrian (hereafter "RESPONDENT").

3. Claimant is a company operates the oldest and most renown stud farm in Mediterraneo.

4. RESPONDENT is a company that is famous for its broodmare lines in Equatoriana.

5. 21 Mar 2017	6. RESPONDENT sends CLAIMANT an invitation to offer 100 doses of frozen semen from Nijinsky III.	7. Exhibit C1, p.9
8. 24 Mar 2017	9. CLAIMANT accepts to offer frozen semen with added conditions,which includes no reselling without consent, and purchase must base on law of Mediterraneo.	10. Exhibit C2, p.10
11. 28 Mar 2017	12. RESPONDENT accepts all the conditions made by CLAIMANT except price and delivery term. RESPONDENT insists the courts of Equatoriana have jurisdictionthe if application of the Law of Mediterraneo.	13. Exhibit C3, p.11
14. 31 Mar 2017	15. ClAIMANT accepts DDP and increases the price by 1000 USD per dose with the consideration not to undertake further risks due to adaptation of delivery clause, and they suggest a hardship clause to avoid this kind of risks. CLAIMANT rejects the jurisdiction of the	16. Exhibit C4, p.12

	courts in Equatoriana,opt for arbitration in Mediterraneo.	
17. 10 Apr 2017	18. RESPONDENT makes a draft largely based on the model clause suggested by the HKIAC and proposes the seat of arbitration shall be Equatoriana, the law of this arbitration clause shall be the law of Equatoriana.	19. Exhibit R1, p.33
20. 11 Apr 2017	21. CLAIMANT accepts to arbitrate under the HKIAC and suggests arbitration in Danubia on the premise that applicable law to Sales Agreement remains the law of Mediterraneo. CLAIMANT also advise to rely on ICC-Hardship clause.	22. Exhibit R2, p.34
23. 12 Apr 2017	24. Car accident causes severe injuries to two main negotiators.	25. Notice of Arbitration, p.5
26. 6 Jun 2017	27. CLAIMANT and RESPONDENT make the final sales contract.	28. Exhibit C5, p.13,14
29. 20 Dec 2017	30. Equatoriana impose a tariff of 30 per cent upon all agricultural goods from Mediterraneo.	31. Exhibit C6, p.15

32. 20 Jan 2018	33. CLAIMANT contacts RESPONDENT to notify the situation and seek solution.	34. Exhibit C7, p.16
35. 23 Jan 2018	36. CLAIMANT complied with its delivery obligation and delivered the remaining 50 doses	37. Notice of Arbitration, p.6
38. 31 Jul 2018	39. CLAIMANT submits the enclosed Notice of Arbitration.	40. Notice of Arbitration, p.4
41. 24 Aug 2018	42. RESPONDENT submits Answer to the Notice of Arbitration.	43. Answer to Notice of Arbitration, P.29

44. INTRODUCTION

45. CLAIMANT has obeyed all responsibility agreed by both parties. Taking into RESPONDENT's urgent needs into consideration, and out of belief that both sides would promote a long-term cooperation relationship, CLAIMANT delivered the goods on time even with hardship and undertook all the extra tariffs which should have been paid by RESPONDENT. On the contrary, RESPONDENT tried to make the contract without exposing its real aim of purchase and planned to break the contract from the beginning. To achieve its aim, RESPONDENT accepted most conditions proposed by CLAIMANT to contribute to reaching a deal, but it broke them just after it received goods. Through renegotiation, RESPONDENT attempted to deny the validity of some agreements and avoid obligations, for which CLAIMANT had to submit the dispute to arbitration.

46. In this deal, CLAIMANT suffered from a great loss, making its operation conditions even worse off. CLAIMANT deserves compensation for its loss. From the contract, CLAIMANT shall be exempted from all responsibilities aroused from hardship, thus it was RESPONDENT who should undertook all tariffs.

Moreover, RESPONDENT shall also be responsible for breach of contract.

48. ARGUMENT

49. ISSUE 1:The tribunal have the jurisdiction and/or the powers under the arbitration agreement to adapt the contract, which includes in particular the question of which law governs the arbitration agreement and its interpretation.

50. RESPONDENT challenged that the tribunal lacked jurisdiction to decide the case by written Answer to the Notice of Arbitration of 24 August 2018 alleging that "the interpretation of the arbitration agreement is governed by the law of Danubia which recognizes that arbitrators may adapt contracts but requires an express empowerment for that. Such an express conferral of powers is, however, missing in the present contract." [*Answer to the Notice of Arbitration, p. 31, No. 13*]. CLAIMANT respectfully requests the tribunal to reject RESPONDENT's challenge. First of all, Art. 19 of The 2018 HKIAC Administered Arbitration Rules stipulates the tribunal may rule on its own jurisdiction under these Rules, including any objections with respect to the existence, validity or scope of the arbitration agreement(s), so the tribunal has the power to decide its own jurisdiction. Moreover, the parties have actually granted the arbitration tribunal the power to adapt the contract, so the tribunal has jurisdiction under the arbitration agreement to adapt the contract (A). Even if the parties have not granted the power to adapt the contract, according to the law of Mediterraneo, which law governs the arbitration agreement and its interpretation, the tribunal have the jurisdiction over the case (B).

51. A.The tribunal has jurisdiction under the arbitration agreement to adapt the contract.

52. Since the general contract law Equatoriana and Mediterraneo is a verbatim adoption of the UNIDROIT Principles on International Commercial Contracts [*Procedural Order No 1, p. 52, No. 4*], the UNIDROIT Principles of International Commercial Contracts ("UNIDROIT")should govern the Frozen Semen Sales Agreement ("Agreement") Pursuant to Art. 1.2 of UNIDROIT a contract is not

required to be made in or evidenced by a particular form, the parties have actually granted the arbitration tribunal the right to adapt the contract, so the tribunal has jurisdiction over this matter(I). From the perspective of contract interpretation, the tribunal also has jurisdiction over the case (II).

53. I.The parties have actually granted the arbitration tribunal the right to adapt the contract, so the tribunal has jurisdiction over this matter.

54. CLAIMANT wishes to obtain an increased remuneration by adapting the contract. parties have actually granted the arbitration tribunal the right to adapt the contract, so the tribunal has jurisdiction over this matter. Reviewing the drafting process of the contract between the two parties, the original intention of both parties was to submit the contract to the arbitrators for adaption if the two parties could not reach an agreement. [*CLAIMANT's EXHIBIT C 8 p. 17, para. 2*] Due to the severe car accident, the consensus was not expressed either in the adaptation clause or the arbitration agreement. However, according to Art. 1.2 of UNIDROIT "*Nothing in these Principles requires a contract, statement or any other act to be made in or evidenced by a particular form. It may be proved by any means, including witnesses*." The consensus between the two parties can be regarded as the DE facto agreement between them, although there was no clearly including of the adaptation clause. The consensus itself can just be regarded as an agreement for there is no form required. Therefore, the tribunal has actually obtained the authorization to adapt the contract and thus has jurisdiction over the case.

55. II.From the perspective of contract interpretation, the tribunal also has jurisdiction over the case.

56. The important reason why CLAIMANT claims to adapt the contract and thus get an increased remuneration is that CLAIMANT thinks that the circumstances in this case are in line with the hardship clause of the Agreement agreed by both parties. In accordance with the provisions of the two parties on the hardship clause, CLAIMANT has good cause to obtain an increased remuneration. Moreover, the hardship clause is explicitly specified in the

Agreement. Whether or not the hardship clause is applicable belongs to the interpretation of the contract term. It is clearly stipulated in the arbitration clause that the tribunal has jurisdiction over the interpretation of the contract, so there is no doubt that the tribunal has jurisdiction.

57. B.According to the law of Mediterraneo, which law governs the arbitration agreement and its interpretation, the tribunal have the jurisdiction over the case.

58. From the perspective of the law governing the arbitration clause, CLAIMANT believes that the law of Mediterraneo which governs the main contract, Frozen Semen Sales Agreement should be applied to the arbitration clause, instead of the law of Danubia. The Arbitration Law of Mediterraneo provides a relatively broad interpretation of arbitration agreements. CLAIMANT's claim for an increased remuneration is also within the scope authorized by the arbitration clause with no doubt, so the tribunal has jurisdiction over CLAIMANT's request. On the contrary, CLAIMANT has never agreed to apply the law of Danubia as the law governing arbitration clause. Actually, there is no applicable law for arbitration clause in the final contract. The RESPONDENT argued that ,"In its reply, of 11 April 2017, CLAIMANT had changed the suggested place of arbitration but had not objected to our proposal that the law of the place of arbitration should govern the arbitration agreement [*Answer to the Notice of Arbitration p.30, No. 6*]." However, CLAIMANT believes that this understanding of the RESPONDENT is incorrect. The defendant did not explicitly state that " the law of the place of arbitration should govern the arbitration agreement " in Mr. Antley's latest draft of 10 April 2017 which can be clearly seen in RESPONDENT's EXHIBIT R 1. In the opinion of CLAIMANT, it was just a coincidence that while the place of arbitration was determined as Equatoriana, the applicable law of the arbitration clause was also defined as the law of state Equatoriana. In the reply, CLAIMANT never agreed that "the law of the place of arbitration should govern the arbitration agreement". CLAIMANT merely changed the place of arbitration to a third country which is different from

Mediterraneo and Equatoriana. On the contrary, CLAIMANT has always held that the arbitration clause is just one clause of the Agreement, and it should also be subject to the law of the main contract, that is, the law of Mediterraneo. Some well-known experts in the field of international commercial arbitration law, such as Julian D.M. Lew advocates that," there is a very strong presumption in favour of the law governing the substantive agreement which contains the arbitration clause also governing the arbitration agreement. This principle has been followed in many cases. This could even be implied as an agreement of the parties as to the law applicable to the arbitration clause. " [*Redfern and Hunter, p. 158*] The arbitration clause is only one of many clauses of the main contract, so the law chosen by both parties to apply to the main contract should also apply to the arbitration clause. Given that the parties have explicitly chosen a particular law as the applicable law of their choice, why a clause in a main contract should apply to some other law not chosen by the parties simply because it happens to be an arbitration clause? In practice, the claim that the applicable law of the main contract is the applicable law of arbitration agreements has been recognized by some English courts. In Union of India v. McDonnell Douglas Corp, the court stated:" The parties may make an express choice of law to govern their commercial bargain and that choice may also be made of the law to govern the agreement to arbitrate. In the present case it is my view that by Art 11 the parties have chosen the law of India not only to govern the rights and obligations arising out of their commercial bargain but also the rights and obligations out of their agreement to arbitrate," [*Union of India v. McDonnell Douglas Corp*] In Sonatrach Petroleum Corporation (BVI) v. Ferrell International Ltd., the court of England believed that where a main contract contains an express choice of law and an arbitration agreement does not contain an independent and express choice of law, the arbitration agreement usually applies the law which is expressly chosen to apply to the master contract. [*Sonatrach Petroleum Corporation (BVI) v. Ferrell International Ltd*] The theories and judgments above well support CLAIMANT 's

point of view. CLAIMANT believes that the applicable law of the main contract should be used to govern the arbitration clause. Therefore, in this case, the law of Mediterraneo should be used to govern the arbitration clause. Since the law of Mediterraneo provides a relatively broad interpretation, the tribunal also undoubtedly has the jurisdiction of this case.

60. ISSUE 2: CLAIMANT Should be entitled to submit evidence from the other arbitration proceedings on the basis of the assumption that this evidence had been obtained either through a breach of a confidentiality agreement or through an "illegal hack" of RESPONDENT's Computer system.

61. CLAIMANT should be entitled to submit evidence from the other arbitration proceedings even though this evidence had been obtained through a breach of a confidentiality agreement.

62. I.CLAIMANT did not derogate from Art. 42 HKIAC 2013 Rules.

63. 1.CLAIMANT's submission did not violate the contractual and statutory confidentiality obligations.

64. Art. 42 HKIAC 2013 Rules limits the obligation of confidentiality of the parties in the other arbitration, that is *"the arbitral tribunal, any Emergency Arbitrator appointed in accordance with Schedule 4, expert, witness, secretary of the arbitral tribunal and HKIAC."* The CLAIMANT does not have such an obligation of confidentiality. Art. 42 HKIAC 2013 Rules does not provide objects or any specific procedures of the obligation of confidentiality, but merely states *"no party may publish, disclose or communicate any information relating to the arbitration under the arbitration agreement(s); or an award made in the arbitration." Even if there is a violation of contractual and statutory confidentiality obligations, the violation came from the two witnesses in the other arbitration but not from the* CLAIMANT *in this arbitration.*

65. CLAIMANT's submission was to protect or pursue a legal right or interest on the basis of Art. 42(3) HKIAC 2013 Rules, which is one of the provisions of Article 42.1.

66. Arbitration is confidential because of its private nature. If an arbitration

only affects the interests of the parties in the arbitration, the confidentiality of arbitration is justified and reasonable, but when the third party or even the public interest is involved, they should be given rights to demand disclosure. In this case, the other arbitration not only affects the interests of the parties, but also rights of CLAIMANT in this arbitration, therefore CLAIMANT's submission is in the exercising of this right.

67. Lawrence Collins explained in case *John Foster Emmott v Michael Wilson & Partners Ltd,* confidentiality has two exceptions in this case, while interest of the third party is included. In the case of *Associated Electric & Gas Insurance Services Ltd v European Reinsurance Company of Zurich*, the protection of the third party is also stipulated in the exception of the obligation of confidentiality. In this arbitration, CLAIMANT should be allowed to pursue its legal right and interest by submitting evidence from the other arbitration proceedings even though this evidence had been obtained through a breach of a confidentiality agreement of the two witnesses.

68. II.The breach of confidentiality by the witnesses in the other arbitration is not directly related to the admissibility of the relevant evidence in this arbitration.

69. 1.Absolute confidentiality does not exist as documents can be disclosed without under "prevailing principles of transparency" or the UNCITRAL Rules on Transparency.

70. Arbitration information could be published, disclosed or communicated if the World Trade Organization supervises the demands of its members, to prove its innocence or to demonstrate its market advantage, or to gain the support of domestic courts, or other self-interest considerations. Besides that, in a specific commercial arbitration case, one party, based on the consideration of business strategy, resolutely does not agree with the open arbitration award, while the other

party may insist on disclosure out of the consideration of strategy. In this way, strategic disclosure, publicity and communication may be made by either party, whether or not a prior confidentiality clause is in place. Various kinds of information disclosure constantly show different aspects of international commercial arbitration system to the public, and finally make this system more transparent. In *Goldman on International Commercial Arbitration,* Emmanuel Gaillard & John Savage stated that Confidentiality is never absolute. A small circle of people will know the ruling, and if the ruling leads to litigation, that circle will expand and eventually lead to openness.[Emmanuel Gaillard & John Savage]

71. 2.CLAIMANT's submission of evidence is admissible, relevant, material and important.

72. Witnesses' violation of contractual and statutory confidentiality obligations in the other arbitration does not affect the authenticity of the evidence, therefore, its relevance, materiality and weight will not be affected by the illegality of the witness in the other arbitration. At the same time, to ensure that the final decision is made on the basis of the correct determination of the facts, the arbitral tribunal should find out the truth of the facts at all costs. CLAIMANT's submission from the other arbitration is closely related to this arbitration and its admissibility should not be denied in order to pursue the legal value of fairness and justice.

73. III.CLAIMANT's submission should be entitled according to commercial practice.

74. In the other arbitration, which can be deduced from the statement of facts in the "Partial Interim Award", the contract, negotiated also by Mr. Antley, also provided for delivery DDP Mediterraneo (INCOTERMS 2010), contained an ICC Hardship Clause 2003, a choice of law clause and arbitration clause. It

provided for arbitration in front of three arbitrators under the HKIAC Arbitration Rules with a place of arbitration in a third country. Also, the imposition of the tariffs on agricultural products by the President lead to the increased cost of seller. The similarities referred above made it necessary for CLAIMANT's submission of evidence from the other arbitration. Although an award on the merits has not yet been rendered, the arbitral tribunal had confirmed its power to adapt the contract should the tariff result in hardship for Respondent in a *"*Partial Interim Award*"* rendered in those proceedings on 29 June 2018.

75. Due to the confidentiality of international commercial arbitration, many information related to arbitration is not disclosed. The risk is that different arbitral tribunals may give different solutions to similar facts and laws. Publicity of awards make it impossible to achieve the diversity of arbitration decisions, which will threaten the reliability and feasibility of arbitration, and ultimately endanger the authority of international arbitration. The convergence of arbitration will gradually unify the applicable rules and give the public a better understanding of the arbitration procedure, and the systematic development in transparency will make arbitration awards more acceptable. The arbitrators' insight is valuable, as sometimes arbitrators reiterate, creating procedural and substantive rules, which can become part of the practice and be followed later. CLAIMANT ask for such restatement by submitting evidence from the other arbitration and a relatively homogeneous award can facilitate arbitration as an effective and reliable form of dispute settlement.

76. IV.CLAIMANT's submission should be entitled to guarantee a impartial verdict efficiently.

77. As *Jeremy Bentham* put it, transparency is the soul of justice, the greatest incentive to effort, and a reliable defense against dishonesty. He asked the judge try his best to be fair. [Jeremy Bentham] CLAIMANT believed that a fair trial could be obtained in a public arbitration that met their reasonable expectations.

Public arbitration will make the system more transparent and fair by allowing the public to supervise it. Just as *Hans Smit* argues, arbitration is a social phenomenon and dispute settlement decisions have a large impact on society. [Hans Smit] Therefore if the arbitrators' work becomes more transparent, the legitimacy of the entire arbitration system will be enhanced.

78. In this arbitration, it will cause some technical inconvenience to the trial of arbitration to emphasize the confidentiality of arbitration. What often happens in practice is a series of interrelated actions or arbitrations, for example, in a chain of contracts or where multiple parties are involved in the same dispute, it is often necessary to rely on the evidence produced in the arbitration between the middle party and the other party, or even the award of the arbitration, to claim or defend against another party in another arbitration or action. At this point, the best solution is to hold a consolidation or concurrent hear session. However, under the principle of confidentiality, different arbitrators cannot hold such a consolidation or concurrent hear session without the parties' agreement, and it is clear that such agreement cannot be reached in this arbitration.

79. Arbitration confidentiality can lead to inefficiencies. This arbitration involve common legal issues and facts with the other arbitration. If CLAIMANT was not entitled to submit evidence from the other arbitration proceedings, repeated work by parties, lawyers, witnesses and arbitrators must be done, which would prolongs arbitration time and reduces arbitration efficiency.

80. CLAIMANT should be entitled to submit evidence through an "illegal hack" of RESPONDENT's Computer system.

81. I.The arbitral tribunal shall determine the admissibility of evidence according to Art. 22 HKIAC 2013 Rules.

82. Evidence through an "illegal hack" of RESPONDENT's Computer system should be included from the absence of express provision.

83. There is no agreement of CLAIMANT and RESPONDENT that evidence through an "illegal hack" of RESPONDENT's Computer system should be excluded, or there is no legal provision of such an evidence, through an "illegal hack" of RESPONDENT's Computer system, should be included in HKIAC 2013 Rule, UNCITRAL Rules(1976), UNCITRAL Model Law on International Commercial Arbitration(1985) or other arbitration rules related.

84. The arbitral tribunal has discretion to determine the admissibility, relevance, materiality and weight of the evidence offered.

85. Discretion has the meaning of acting on one's own authority and judgement. In law, discretion as to legal rulings, such as whether evidence is excluded at a trial, may be exercised by a judge. While discretion of the arbitral tribunal means that in international commercial arbitration, unless the parties have agreed otherwise or the law provides otherwise, the arbitral tribunal may decide the relevant evidentiary matters on its own. Many arbitration provisions have established the discretion of the arbitral tribunal. For instance, A*rt. 27(6) UNCITRAL Rules(1976) "The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered." And Art. 19(2) UNCITRAL Model Law on International Commercial Arbitration(1985) "The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.*" Similar rules can be seen from *Art. 20(6)*

AMERICAN ARBITRATION ASSOCIATION INTERNATIONAL ARBITRATION RULES(2005) "The tribunal shall determine the admissibility, relevance,materiality and weight of the evidence offered by any party . The tribunal shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client." Moreover, according to *Art. 20(5)AMERICAN ARBITRATION ASSOCIATION INTERNATIONAL ARBITRATION RULES(AAA) "The tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered by any party."* Therefore, when the parties agree to submit the dispute to arbitration for settlement, due to the special nature of arbitration autonomy, arbitrators are generally given a certain discretion in evidence activities.

86. Arbitration laws in many countries give the arbitral tribunal a great deal of discretion in terms of rules of evidence. For example, Art.*34 of* the British Arbitration Act of 1996 "*It shall be for the tribunal to decide all procedural and evidential matters, subject to the right of the parties to agree any matter. Including—whether to apply strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material (oral, written or other) sought to be tendered on any matters of fact or opinion, and the time, manner and form in which such material should be exchanged and presented".*

87. II.Exclusionary principle of illegal evidence should not be applicable in an arbitration.

88. The exclusionary rule of illegal evidence is an extension of the admissibility of evidence, which is to judge the validity of evidence, that is, to exclude the evidence collected by illegal means, to deny its admissibility and to negate its effectiveness. This rule is widely embodied in the field of criminal procedure. It began in the common law system, aimed at protecting the rights of citizens, the public interest, and limit the abuse of public power. However, in international commercial arbitration, both parties to a dispute are equal subjects, so public

interests are rarely involved in the collection of evidence and other activities. Therefore, except illegal evidence collected by means of manifest violations of civil rights should be expressly excluded, the illegality of the collection of other evidence and the need for exclusion should be at the discretion of the arbitral tribunal. And evidence through an "illegal hack" of RESPONDENT's Computer system is such an evidence should not be exclude but should be at the discretion of the arbitral tribunal.

89. III.Strict rules of evidence principle should not be applicable in an arbitration.

90. 1.The rules of evidence in international commercial arbitration should be more flexible than litigation.

91. Steyn, in his *Arbitration International(1994)*, said *"there is no binding authority which holds that the technical rules of evidence are applicable in arbitration…that is a false premise because one of the purposes of arbitration is to avoid the over-elaborate procedure of Court proceedings and the technical rules of evidence."* [Steyn] Moreover, Goode referred in his *Arbitration International "the only requirement should be that the arbitrator acts fairly and in conformity with natural justice.*" [Goode] Other than that, Yang Liangyi, a senior arbitrator in Hong Kong, also thinks that due to the lack of legal foundation of some arbitrators, it is difficult to expect the arbitrators to have a full grasp of the complex evidentiary law. Which can also be seen from the Preamble of *the rules of evidence of the International Bar Association on International Commercial Arbitration(IBA rules of evidence)*, *"The Rules are not intended to limit the flexibility that is inherent in, and an advantage of, international arbitration, and Parties and Arbitral Tribunals are free to adapt them to the particular circumstances of each arbitration.".*

92. 2.There is no agreement of CLAIMANT and RESPONDENT to apply the strict rules of evidence in the proceedings.

93. In international commercial arbitration, arbitrators may not apply the strict rules of evidence in the proceedings and decide on matters relating to evidence on its own is the common practice, unless the agreement between the parties or arbitration rules and other mandatory provisions require to do so.

94. *The British Arbitration Act of 1996 provides that the application of strict rules of evidence*(or any other rules) shall be for the tribunal to decide. *According to article 22.1.(vi) of LCIA Arbitration Rules (2014), The Arbitral Tribunal shall have the power, upon the application of any party or (save for sub-paragraphs (viii), (ix) and (x) below) upon its own initiative, but in either case only after giving the parties a reasonable opportunity to state their views and upon such terms (as to costs and otherwise) as the Arbitral Tribunal may decide:(vi) to decide whether or not to apply any strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material tendered by a party on any issue of fact or expert opinion; and to decide the time, manner and form in which such material should be exchanged between the parties and presented to the Arbitral Tribunal.* Therefore, the rules applied by the court do not have to be applied in arbitration proceedings, so is the strict rules of evidence principle.

95. IV.CLAIMANT's submission should be entitled for the pursuit of justice and efficiency.

96. The value orientation of efficiency priority. In the evidence system, on the one hand, the arbitral tribunal, out of the pursuit of the legal value of fairness and justice, should find out the truth of the facts at all costs, so as to ensure that the final decision is made on the basis of correctly recognizing the facts. The outdated firewall Respondent had used to protect its computer system made it easy for the hackers to enter the system. In this way, Respondent's security gap made CLAIMANT suspected his ulterior motives.

98. ISSUE 3: CLAIMANT is entitled to the payment of US$ 1,250,000 whether under Art.12 of the contract or under the applicable law.

99. A. The situation met by CLAIMANT constitutes hardship or impediment.

100. I.The hardship clause in Art.12 of the contract covers the situation CLAIMANT has met.

101. Pursuant to Art.12 in the Agreement, hardship is agreed to have these conditions:(i) hardship should be caused by either additional health and safety requirements or comparable unforeseen events; (ii) the result of the situation is to make the contract more onerous. [Exhibit C5, p. 14, No.12]The implication expressly demonstrates a more liberal standard of hardship.[Roth]

102. The declare of RESPONDENT that only hardship caused by additional health and safety requirements can be covered by the Art.12, is obviously against the principle that contract should be interpreted in the whole text under 4.4 UNIDROIT Principles, making the latter part of the term meaningless.

103. The sales contract is bound by the contract law of Mediterraneo, which is a verbatim adoption of the UNIDROIT Principles [PO1, p. 53, No. 4]. In Art. 4.1 of UNIDROIT Principles, interpretation of Contract should obey the common intention of Parties. CLAIMANT has illustrated intention to get rid of all risks that may arise from the adapted delivery clause. [Exhibit C4, p. 12, para.5]To make it clear, CLAIMANT also refers to the situation it encountered in 2014 to suggest that CLAIMANT wants to avoid the risks just like the situation.[PO2, p. 58, No. 21] All intentions of CLAIMANT were at last accepted through the final version of agreement.

104. For the first condition of hardship, additional health and safety requirements were referred to the events in 2014, which was unforeseen due to the acts of government. Disputed situation was comparable unforeseen since the political environment at that time was adequate for people to hold a positive

attitude to free trade. The tariffs attached by the government of Equatoriana is against what it used to insist thus cannot be reasonable foreseen when they concluded a contract. [Exhibit C6, p. 15]

105. Secondly, the result of hardship was under no doubt more onerous due to the additional 30% tariff imposed as retaliation. [Exhibit C6, p. 15] Thus the standard of hardship in agreement is met.

106. The effect of the stipulated hardship is that CLAIMANT can be exempted from all responsibility to the additional burden. [Exhibit C5, p. 14, Art.12] According to pacta sunt servanda, RESPONDENT is bound to perform the obligation, 1,250,000 USD.

107. II.Even if the event is considered not to be covered by Contract, it can also be included in Art. 79 of CISG or Art. 6.2.2 of UNIDROIT principles.

108. 1.Hardship clause in Agreement did not constitute a derogation of CISG or UNIDROIT principles.

109. Hardship clause in Agreement shall not be regarded as a derogation of CISG or UNIDROIT principles. There is no explicit exclusion in the Contract, nor implicit one. By using the implication "hardship caused by", Art. 12 in Contract aims to provide adequate remedies for the situation CLAIMANT concerns rather than define hardship exclusively, as UNIDROIT principles and CISG govern the Agreement, they can be applied as supplement, so Art. 6.2.2, 6.2.3 of UNIDROIT principles and Art. 79 of CISG can still be applied in this case. [Exhibit C5, p. 14, No. 14] As for Art. 79 of CISG, no direct hardship clause but just a general impediment can be found, in this sense, Art. 79 cannot be excluded unless stipulated expressly.

110. 2.The situation is incorporated in UNIDROIT principles.

111. Art. 6.2.2 UNIDROIT principles can be applied.

112. As the Agreement is bound by the contract law of Mediterraneo, which is a verbatim adoption of the UNIDROIT Principles [PO1, p. 53, No. 4], Art. 6.2.2 and 6.2.3 in UNIDROIT Principles can be applied directly in the situation.

113. The tariff was unforeseeable and unavoidable. The tariffs of Equatoriana was imposed after parties concluded the Contract [Exhibit C6, p. 15], and it cannot be taken into consideration because it was inconsistent with the norm that government of Equatoriana used to obey. As it is argued by Perillo, everything in some sense foreseeable, so the event that out of bounds that a reasonable party can foresee is considered as unforeseeable event. [Perillo] And it was surprising that the tariffs should be put on to breeding of racehorses, which was not considered to be ordinary animal product in the past. [Exhibit C7, p. 16, pare.2] Imposing tariffs was the acts of government which beyond the control of CLAIMANT. And the time when event took place, CLAIMANT contacted RESPONDENT at once, RESPONDENT said it would be settled properly and stressed goods must be delivered on time. Due to the requirement of RESPONDENT, it cannot be avoided. [Exhibit C8, p. 18, para. 3] Therefore, the requirements in Art. 6.2.2 (a)-(d) of UNIDROIT principles are satisfied.

114. The costs for CLAIMANT to perform obviously rose, due to the additional 30% tariff. Moreover, CLAIMANT is experiencing hard financial situation due to losses in this deal. CLAIMANT will lost financial support and make its situation even worse off. CLAIMANT expected to earn 300,000 USD in the last instalment, [PO2, p. 59, No. 29] however cannot profit from it but add the additional cost of 1,500,000 USD, it went beyond CLAIMANT's expectation and exceeds what CLAIMANT can bear. Therefore, the objective standard shall be lowered thus can be met in the event. Hardship can be constituted in this sense.

115. The equilibrium of the Contract is fundamentally altered. The threshold of "fundamentally alter the equilibrium" shall depend on the circumstances in the case. [Comment on Art. 6.2.2, p. 218, No.2] Although it has been suggested to set the standard at a minimum 50%, taking into consideration of the nature of the

Contract and CLAIMANT's situation, the standard should be lowered [Roth], especially for the hard financial situation of CLAIMANT. [Schwenzer] Apart from proportion, the environment of Agreement is off more significance.[British Movietonews v London and District Cinemas] CLAIMANT intends to, use the deal to get profit and recover from hard financial situation, and also want to benefit from RESPONDENT's reputation thus expand its trade. Since extra tariff is imposed and the RESPONDENT's breach to resell forbidden, the circumstance of deal is totally a different thing to CLAIMANT, therefore the contract is considered to be frustrated. [Schmitthoff & Gallo]

116. CLAIMANT got in touch with RESPONDENT as soon as it realized the tariff was also imposed on semen, and tried to renegotiate with RESPONDENT. [Exhibit C7, p. 16] Depending on promise to settle the tariff properly by RESPONDENT, CLAIMANT delivered the goods without delay and paid the tariff based on good faith.

117. Art. 6.2.3 of UNIDROIT principles provides remedies.

118. As 6.2.3 of UNIDROIT Principles, the effect of hardship is to renegotiate which has been done and failed to reach agreement. [Exhibit C8, p. 18, para 4] Then the tribunal can adapt the contract to rebuild equilibrium.

119. Adaptation of contract is regarded as a substantive problem under Art. 6.2.3 of UNIDROIT principles in the arbitration law (the Contract Law of Mediterraneo), but Danubia consider it as a procedural issue. As the applicable substantive law has make certain how to deal with adaptation of contract, there is no gap to be filled, so arbitral tribunal shall adapt it through arbitration law. [Berger]

120. As it is a contract lasts for 2 years, and the first two installment has been delivered smoothly, and only the performance of last installment meet with hardship, so it retains all remedies with regard to the last part [Magnus], and the price shall be improved proportionally. [Müller] In the last installment, CLAIMANT needs to pay an extra 30% tariff, thus CLAIMANT's performance

in last installment should be relieved from the 30% tariff.

121. The adjustment of contract shall make performance bearable for the aggrieved party. [Fucci] CLAIMANT is in bad financial situation, depending on the support from creditors, thus it did not have the ability to bear the burden. Taking into consideration that 30% additional tariff is acceptable to RESPONDENT, RESPONDENT shall undertake the tariff.

122. As CLAIMANT shall not benefit from hardship [Alimenta v. Cargill], cutting off 5% margin of profit, the rest is expected to be undertaken by RESPONDENT. As CLAIMANT has paid all the tariff, 1,250,000 USD should be paid to CLAIMANT.

123. 3.Art. 79 of CISG can be applied in this situation.

124. The situation constitutes an impediment.

125. CLAIMANT paid the tariff out of the impression that RESPONDENT has agreed to adapt the price, so all tariff will not burden CLAIMANT. [Notice, p. 5, No. 13] CLAIMANT did not mean to be bound by the obligation, but just paid them due to good faith, thus the obligation to paying tariff is not performed by CLAIMANT.

126. The tariffs of Equatoriana was imposed after parties concluded the Contract [Exhibit C6, p. 15], and it cannot be taken into consideration because it was inconsistent with the norm that government of Equatoriana used to obey. And it was surprising that the tariffs should be put on to breeding of racehorses, which was not considered to be ordinary animal product in the past. [Exhibit C7, p. 16, pare.2] Imposing tariffs was the acts of government which beyond the control of CLAIMANT. CLAIMANT shall not assume the particular situation of risks, as the adaptation of delivery clause is made to benefits form CLAIMANT's experience rather than burden it.[Exhibit C3, p. 11,para. 3] The requirement of Art. 79(1) of CISG satisfied.

127. Impediment must be limited when applied to the case, as it is a sales

contract, and not belongs to certain contract with high risks. [Huber] A restricted interpretation of Art.79 of CISG is unjustified. Impediment do not imply the cause of impediment makes it tatally impossible to performance [Southerington], but just cannot be reasonable foreseen or avoided. [Bonell] Besides, the fifth sub-paragraph of Art. 79 of CISG establishes that if it is economic impossible for debtor to perform, other method except asking for damages cannot be required. [Elena] Therefore, the cause need not to be impossible, unreasonable is sufficient. For CLAIMANT, it depends on the deal to profit and get rid of hard financial situation, taking consideration of CLIAMANT's hard financial situation, which CLAIMANT has been suffering loss since 2014, and the burden of the tariff may absolutely make its financial situation worse off, it is unreasonable for CLAIMANT to undertake the tariffs. [PO2, p. 59, No. 29] In contrast, RESPONDENT is in a much better situation than CLAIMANT, which can undertake the obligations without being largely affected. [PO2, p. 59, No.30]

128. In addition, it is economic impossible for CLAIMANT to undertake the tariff. CLAIMANT has not profited for more than 3 years, and its credits also depend largely on this deal, the burden of 1,250,000 USD, will make CLAIMANT in heavier debt, and will isolate it from financial assistance, which totally ruin the business of CLAIMANT. [PO2, p. 59, No.30] It is unreasonable to make a party ruins due to changed circumstances. [Alimenta v. Gibbs Nathaniel, Zweigert&Hein] Taking the economic impossibility into account, the situation constitutes an excuse to perform.

129. As no third party is involved, Art.79(2) can be set aside. The effect has been existed after the conclusion of Agreement, and before the third installment, it may also last for a period of time, thus the exemption has effect since the appearance. [Exhibit C6, p. 15, para. 2] Art. 79(3) is satisfied. After CLAIMANT realized the additional tariff is also imposed on the goods, it contacted RESPONDENT instantly, CLAIMANT notified the situation and sought to deal with it with RESPONDENT. [Exhibit C7, p. 16] Art. 79(4) is satisfied.

130. Thus an impediment exists in the situation.

131. Remedies are available through CISG and UNDROIT principles.

132. From Art. 79(5) of CISG, CLAIMANT has the right to apply for any remedy except claim damages. For the remedy, CLAIMANT based on Art. 7(1) of CISG, was entitled to ask for renegotiation and adapt to the changed circumstance. [Schlechtriem] It was well-recognized that there is a gap in the CISG to be filled, in accordance with Article 7(2) CISG, by general principles of international trade. For gap-filling purposes, general principles governing the law of international commerce as incorporated inter alia in the Unidroit Principles of International Commercial shall be applied, and the parties are entitled to renegotiation. [Scafom International BV v. Lorraine Tubes SAS] Remedies in UNIDROIT principles are also considered to be a trade usage of CISG,[Schlechtriem/Butler] and can be supplement when apply Art. 79 of CISG.[] Obviously, CLAIMANT and RESPONDENT failed to reach an agreement on the additional tariffs. If renegotiations have failed, the party disadvantaged by hardship should be entitled to seek court-ordered amendments to the contract. [Rimke]

133. Even through a different method, the remedies shall still be applied. There is an absence of remedies in Art. 79 of CISG [Schwenzer/Hachem], and the gap shall be filled by applicable law to the contract. [Nuova v. Fondmetell, Biellon v. EGO] In the case, the applicable law of the contract is Contract Law of Mediterraneo, which is a verbatim adoption of the UNIDROIT Principles [PO1, p. 53, No. 4], thus the remedies in Art. 6.2.3 are applied.

134. Impediment can also justified an unilateral requirement to adapt the contract. [Islamic v. Cubic] As the burden of tariff put CLAIMANT to the edge of business ruins, and two parties cannot find out a solution that satisfied both, only the adaptation of tribunal can be applied to remedy.

135. Taking into the same consideration to rebuild the balance of contract, the same conclusion can be drawn from the result of adaptation through hardship in

UNDROIT principles. Thus CLAIMANT is entitled to 1,250,000 USD from RESPONDENT.

136. B. If under no circumstance can the tribunal accept it as a hardship or impediment upon analysis above, other situations shall be considered to constitute fraud.

137. I.RESPONDENT breached the contract.

138. According to the UNIDROIT Principles Art.1.2, nothing requires a contract to be made in or evidenced by a particular form. Statements of intent made by parties either in the course of the formation of a contract also be applied.

139. CLAIMANT has mentioned that the frozen semen shall not be re-sold to third parties without their express written consent. [Exhibit C2, p. 10, para. 4] The proposal for concluding a contract expressly indicates the intention of the offeror to be bound in case of acceptance, and RESPONDENT accepted it in the text of mail. [Exhibit C3, p. 11, para. 3]According to UNIDROIT Principles Art.2.1.1, It could constitute an agreement on reselling. Therefore, the agreement between CLAIMANT and RESPONDENT regarding the prohibition of reselling can produce the same effect as the contract text.

140. RESPONDENT under no doubt breached the agreement. RESPONDENT resole the goods to third party without admission from or notification to CLAIMANT.[PO2, p. 59,No. 19]

141. The limitation on re-sell result in CLAIMANT's intention to know the result of offspring, upon which CLAIMANT can arrange its management. RESPONDENT resold these semen thus damaged CLAIMANT potential interest of manufacture, on the meantime, RESPONDENT gained a 20% profit from the breach which also cause damage to CLAIMANT's potential financial interest since CLAIMANT can sell these itself. [PO2, p. 59,No. 19]

142. II.Furthermore, a fraud can be deduced from the performance of RESPONDENT.

143. 1.The performance of RESPONDENT constitutes fraud in Art. 3.2.5 of UNIDROIT principles.

144. RESPONDENT stated in its invitation to offer that it pursues to become "one of the leading breeders for racehorses", and also refers to previous successful breeding to show its advantages to breed. [Exhibit C1, p. 9, para. 2] So the expression of RESPONDENT left CLAIMANT the impression that it wants to corporate with CAIMANT, and breed competitive racehorses. Based on the same intention to breed excellent racehorses, CLAIMANT even accepted to offer the semen exceed the normal amount, and out of the same intention, CLAIMANT added a condition that semen cannot be resold unless the receipt of written permission from CLAIMANT and usage of semen shall be informed to CLAIMANT. [Exhibit C2, p. 10, para. 4] CLAIMANT was pleased to help RESPONDENT to breed racehorse because it also want to benefit from the reputation of RESPONDENT and expand its market if the breeding is successful.

145. However, RESPONDENT intended to break the contract from the beginning. Depending on the implication of RESPONDENT, CLAIMANT accepted and added the limitation not to resell and bound to inform. But as it is proved by evidences, RESPONDENT aimed to impose pressure to the authority through resell a large amount of semen from the deal, to get more breeders involved instead of breeding. [Notice, p. 5, No. 6]

146. RESPONDENT did fraudulent representation, and then breached it immediately, which goes against good faith, and falls into the scope of fraud in Art. 3.2.5 of UNIDROIT principles.

147. 2.RESPONDENT is liable for CLAIMANT's damage.

148. The remedies provided in UNIDROIT principles is to avoid the contract but obviously as the main responsibilities of CLAIMANT has been enacted, it is not practical. Through Art. 3.2.16 of UNIDROIT principles, CLAIMANT can be awarded to compensation.

149. RESPONDENT did fraudulent representation thus making CLAIMANT one party of the deal. In this deal, CLAIMANT has a great loss. In Art. 7.4.1 of UNIDROIT principles, accordance with comment No. 3 on Art. 7.4.1, CLAIMANT has the right to apply remedies to damages arousing from fraud of RESPONDENT.

150. Therefore Art. 7.4.2 of UNIDROIT principles shall be applied, full compensation is supposed be made to CLAIMANT. All efforts CLAIMANT made to perform should be included. For actual damage, it was demonstrated in the chart below.

151. Item	152. Cost of CLAIMANT	153. Paid by RESPONDENT	154. Damages of CLAIMANT	155. Clarification
156. First and Second Installments	**157. 4,820,000 USD**	**158. 5,000,000 USD**	**159. -180,000 USD**	160. See No. 37
161. Third Installment	**162. 6,200,000 USD**	**163. 5,000,000 USD**	**164. 1,200,000 USD**	165. See No. 37
166. Resell	**167.**	**168. -300,000 USD**	**169. 300,000 USD**	170. See No. 37
171. Overall	**172.**	**173.**	**174. 1,420,000 USD**	175. See No. 37

176. As CLAIMANT has made a profit of 180,000 USD in 2017 [PO2, p. 59,

No. 29], and RESPONDENT has paid the prices of 5,000,000 USD ahead, the real cost of CLAIMANT is deduced to be 4,820,000 USD. For the last installment, CLAIMANT intended to earn 300,000 USD, that is to say, the cost was expected by CLAIMANT to be 4,700,000, owing to the extra 30% tariff 1,500,000 USD on the goods valued 5,000,000 USD, CLAIMANT paid 6,200,000 USD, thus actually has a damage of 1,200,000 USD compared to the price RESPONDENT has paid. RESPONDENT has resold 15 doses of semen, and got a 20% profit, which led to the potential damages. [Notice, p. 8, No. 20] Overall, CLAIMANT at least has a loss of 1,420,000 USD.

177. Due to full compensation, RESPONDENT is supposed to pay 1,420,000 USD.

178.

179. In conclusion, CLAIMANT should be relieved directly through the hardship clause in contract, and RESPONDENT shall be required to pay 1,250,000 USD to claimant; or Art. 79 in CISG or Art. 6.2.3 in UNIDROIT principles shall be applied, resulting in an adaptation of tribunal, and RESPONDENT shall also undertake 1,250,000 USD in this aspect; or through fraud of RESPONDENT, an restitution of contract is acceptable, and RESPONDENT should transfer 1,420,000 USD in this case.