Sixteenth Annual
Willem C Vis East International Commercial Arbitration Moot

SYMBIOSIS LAW SCHOOL
PUNE

Memorandum for CLAIMANT

HKIAC/A18128 – Phar Lap Allevamento v. Black Beauty Equestrian

On Behalf of	**Against**
Phar Lap Allevamento	Black Beauty Equestrian
Rue Frankel 1	2 Seabiscuit Drive
Capital City	Oceanside
Mediterraneo	Equatoriana
CLAIMANT	RESPONDENT

AKASH RAY • ANUSHKA SINGH • ISHANI CHOPRA

KSHITIJ RATHORE • MOKSH RANAWAT • VELPULA AUDITYAA

Pune, India

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4. Alternatively, the law derived by application of closest-connection test is also the law of Mediterraneo 4

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LIST OF ABBREVIATIONS

Arb.	Arbitration
Art.	Article
AUT	Austria
CEO	Chief Executive Officer
Cir.	Circuit
Cl.	Clause
Co.	Company
Corp.	Corporation
DDP	Delivered Duty Paid
e.g.	example
ENG	United Kingdom of Great Britain
et. al.	et alii (and others)
Ex.	Exhibit
FMD	Foot and Mouth Disease
FRA	France
FSSA	Frozen Semen Sales Agreement

GER	Germany
HK	Hong Kong
HKIAC	Hong Kong International Arbitration Centre
i.e.	that is / in essence
IBA	International Bar Association
Ibid	ibidem (in the same place)
ICC	International Chamber of Commerce
ICSID	International Centre for Settlement of Investment Disputes
Inc.	Incorporated
Infra	below
Intl.	International
Lloyds Rep	Lloys Law Reports
Ltd.	Limited
No.	Number
NZ	New Zealand
OGH	Oberster Gerichtshof (Austrian Supreme Court)
p./ pp.	page/ pages

P.O.	Procedural Order
para.	paragraph
SA	Sociedad Anonima (Limited Company)
SG	Singapore
SGHC.	Singapore High Court
Supra	above
SWZ	Switzerland
Translex Principles	Translex Principles on International Law
UNCITRAL	United Nations Commission on International Trade Law
UNIDROIT	International Institute for the Unification of Private Law
Unif L. Rev.	Uniform Law Review
USA	United States of America
v.	versus (against)
VIAC	Vienna International Arbitration Centre
WTO	World Trade Organization
Y.B.	Yearbook
$	Dollars

%	per cent
&	and

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LATIN MAXIMS

force majeure	Unforeseeable circumstances
Kompetenz-kompetenz	a legal body, such as a court or arbitral tribunal, has the competence, or jurisdiction, to rule as to the extent of its own competence
lacunae intra legem	internal gaps
lacunae praeter legem	external gaps
Lex arbitri	The law of the arbitration

STATEMENT OF FACTS

The Parties' to this arbitration are Phar Lap Allevamento ("**CLAIMANT**") and Black Beauty Equestrian ("**RESPONDENT**", collectively "**the Parties**").

CLAIMANT is a renowned stud farm and offers frozen semen of its champion stallions for artificial insemination. It is a company based in Mediterraneo.

RESPONDENT is an equestrian center in Equatoriana. It has started a new programme for breeding racehorses.

21 March 2017	RESPONDENT contacted CLAIMANT to inquire about the availability of '*frozen semen*' of Nijinsky III for its breeding programme.
24 March 2017	CLAIMANT accepted RESPONDENT's demand for purchase of 100 doses of Nijinsky III's frozen semen.
12 April 2017	Ms. Julie Napravnik and Mr. David Krone, negotiators on behalf of the Parties', met at the Annual Colt Auction at Danubia to finalize terms of the agreement. They were severely injured in a car accident, leading to change of final negotiators.
6 May 2017	After another round of negotiations undertaken by different negotiators, the Parties finalized and entered into the Frozen Semen Sales Agreement ("**FSSA**"). Under the FSSA, the CLAIMANT was obliged to sell 100 doses of frozen semen for which RESPONDENT had to pay $ 10,000,000 in due consideration. In Clause 15 of the FSSA, the Parties agreed to settle all disputes by arbitration under the 2013 HKIAC Administered Arbitration Rules with the seat of arbitration to be at Vindobana, Danubia.
20 May 2017	First Delivery of 25 doses delivered by the CLAIMANT.
3 October 2017	Second Delivery of 25 doses delivered by the CLAIMANT.
November 2017	25% tariff imposed by Mediterraneo on agricultural products from Equatoriana to protect the Mediterranean agricultural sector.
19 December 2017	Equatoranian government retaliated by imposing 30% tariffs on selected products from Mediterraneo including frozen semen.

20-21 January 2018	The Parties started negotiations with regard to price adjustments for the frozen semen in light of the retaliatory measures of Equatorania. Mr. Greg Shoemaker, a representative of the RESPONDENT requested timely delivery of the remaining doses while also accepting the CLAIMANT'S need for price increase.
23 January 2018	The third delivery of 50 doses of frozen semen is made by the CLAIMANT.
12 February 2018	Renegotiations for price increase end abruptly with the RESPONDENT refusing to pay any additional amount of tariffs, therefore leading to outstanding contractual payments.
31 July 2018	CLAIMANT initiated arbitral proceedings at the Hong Kong International Arbitration Centre.
27 August 2018	Ms. Wantha Davis & Dr. Francesca Dettorie were confirmed as co-arbitrators by the HKIAC.
18 September 2018	Arbitral Tribunal was constituted with Prof. Calvin de Souza as the presiding arbitrator.
2 October 2018	Written Communication received from CLAIMANT requesting partial interim award from another tribunal under HKIAC Rules to be submitted as evidence by the CLAIMANT in present proceedings.
4 October 2018	Written Communication received from the RESPONDENT in reply to contentions raised by the CLAIMANT in previous communication.
5 October 2018	Procedural Order 1 passed by the arbitral tribunal.
2 November 2018	Procedural Order 2 passed by the arbitral tribunal.

INTRODUCTION

The Tribunal has the jurisdiction to decide a dispute for the outstanding contractual payment arising out of the FSSA. The scope of FSSA is to be interpreted by the law of Mediterraneo and not the law of Danubia. In light of this, the Tribunal is respectfully requested to allow the claim for adaptation of the contract in light of the Parties agreement to arbitrate 'any dispute' and under its general power to adapt the price **(Issue I)**.

To further establish CLAIMANT's entitlement to the abovementioned costs, it requests the 'Partial Interim Award' from the other proceeding administered under HKIAC to be admitted as evidence. The Award considering similar facts and circumstances also recognizes the Tribunal's power to adapt the contract. **(Issue II)**.

In the present case, the retaliatory tariffs imposed by Equatoriana led to an increase in the cost of delivery of goods which had to be borne by the CLAIMANT under DDP. However, such an increase in costs were not envisioned under the agreed upon terms of the contract. Regardless of the retaliatory tariffs and the high costs which the CLAIMANT was subsequently encumbered with, it ensured timely delivery of the goods upon RESPONDENT's promise to adapt the price of the contract, the need for which had been recognized by the Parties through the contract itself. Subsequently the CLAIMANT entered into negotiations with the RESPONDENT, which proved to be unsuccessful. The CLAIMANT thus seeks additional payment as a consequence of adaption of the price under Cl. 12 of the FSSA and the CISG **(Issue III).**

ARGUMENTS

ISSUE 1: THE ARBITRAL TRIBUNAL HAS JURISDICTION TO DECIDE THE DISPUTE REGARDING THE ADAPTATION OF THE CONTRACT.

1. The Tribunal has jurisdiction to deal with issues related to the need for price adaptation with respect to the FSSA of 6 May, 2017 [*Ex. No. C5, p. 13*]. Under Cl. 15 of the FSSA, the Parties have agreed on the 2018 HKIAC Administered Arbitration Rules (the "**HKIAC Rules**") to resolve any disputes which arise from the FSSA. Under the principle of *kompetenz-kompetenz*, the Tribunal may decide on matters concerning their own jurisdiction [*Case No. 4367 (ICC); Case No. 4472 (ICC); Case No. 4402 (ICC)*]. The Tribunal has the power rule on its own jurisdiction including any objections with respect to the existence, validity or scope of the arbitration agreement. [*HKIAC Rules, Art. 19.1*].
2. The RESPONDENT has erroneously argued that the Tribunal does not have the jurisdiction to hear and decide the dispute regarding the adaptation of the contract. The CLAIMANT shall prove the contrary by establishing that, the law governing the FSSA, i.e. law of Mediterraneo, also governs the arbitration agreement **(A)** and that the Tribunal has the jurisdiction and power to adapt the contract under the same **(B).** Even if the law of seat is to be applied, the Tribunal still has the power to adapt the contract **(C).**

A. The law of Mediterraneo governs the arbitration agreement

3. The validity of an arbitration agreement under the law of the seat arises for consideration only if there is no indication of the law the parties have subjected themselves to in the agreement. [*Born I, p. 526*]. In the present circumstances, there has been a clear error on part of the RESPONDENT in construing the application of the law to the present arbitration agreement as there exists an express provision under Cl. 14 of the FSSA. The Clause states that the FSSA as a whole shall be governed by the law of Mediterraneo and CISG [*Ex. No. C5, p. 13*]. Thus, the respondent's allegations are unfounded in nature.
4. It is contended by the CLAIMANT that the law of Mediterraneo governs the present arbitration agreement. Firstly, the doctrine of separability cannot be used to justify the preference of the law of the seat over the law of the agreement **(1).** Secondly, there exists a natural presumption in favour of the law governing the FSSA to govern the law of the arbitration agreement **(2).** Thirdly, the implied choice of the Parties' leads towards the application of the law of Mediterraneo **(3).** Alternatively, the law derived by application of closest-connection test is also the law of Mediterraneo **(4)**.

1. The doctrine of separability cannot be used to justify the preference of the law of the seat over the law of the agreement

5. The doctrine of separability is limited in application to the jurisdiction-granting power of the tribunal in case the container contract becomes invalid [*Sul América Cia Nacional de Seguros SA v Enesa Engenharia (ENG, 2012); BCY v BCZ (SG, 2016)*]. The doctrine does not extend to creating distinct legal agreements in one contract [*AstraZeneca UK Ltd v Albemarle Intl Corp (ENG, 2011); Habas Sinai v. VSC Steel (ENG, 2013); Born I, pp. 349 – 471; Sumitomo Heavy Industries Ltd. V. ONGC, (ENG, 1994)*]. This doctrine serves to give effect to the parties' expectation that their arbitration clause embodying their chosen method of dispute resolution remains effective even if the container contract is alleged or found to be invalid [*BCY v BCZ (SG, 2016)*]. The same principle is embodied in Art. 16.1 of the UNCITRAL Model Law [*UNCITRAL Model Law, Art. 16.1*].
6. The RESPONDENT contends that the law of Mediterraneo and CISG do not apply to the arbitration agreement as it is to be construed independently under the doctrine of separability [*Answer to Notice of Arbitration, p. 31, para. 14*]. However, this is an incorrect application of the doctrine as it shall lead the arbitration agreement to be construed as legally separate agreement from the container contract. This would lead to an undue advantage of the doctrine of seperability against the CLAIMANT.
7. The doctrine of separability cannot be used to delineate the two into separate and distinct identities. Hence, it can be concluded that the law governing the container contract and the law governing the arbitration agreement are one and the same unless there are any indications to the contrary. In present case, the laws governing the container contract, i.e. law of Mediterraneo and CISG, are the laws applicable to the arbitration agreements.

2. There exists a natural presumption in favour of the law governing the FSSA to govern the law of the arbitration agreement

8. Where the arbitration agreement is a clause forming part of a container contract, it is reasonable to assume that the contracting parties intend their entire relationship to be governed by the same system of law. [*BCY v BCZ (SG, 2016); Miles/Goh, pp. 385-394*]. In the absence of an express choice of law for the arbitration agreement, the "natural inference" is that the proper law of the container contract governs the arbitration agreement [*Masser, pp. 2767–2768; Emanuele/Molfa/Marvasi, pp. 18-84*]. This proper law is the arbitration law of Mediterraneo.
9. Cl. 15 of the FSAA does not contain an express choice of law, only the seat of arbitration is mentioned [*Ex. No. C5, p. 13*]. If the intention between the Parties was otherwise, it is only reasonable to expect the parties to have specifically provided for a different system of law to govern

the arbitration agreement [*BCY v BCZ (SG, 2016); Piallo GmbH v Yafriro Intl Pte Ltd, (SG, 2014)*], which has not been done in the present FSSA by the Parties. Parties rarely specify the law applicable to the arbitration agreement as distinct from the container contract [*Born II, p.818*]. Hence, when a choice of law clause stipulates that the "agreement" is to be governed by one country's system of law, the natural inference is that parties intend the express choice of law to govern and determine the construction of all the clauses in the agreement which they signed including the arbitration agreement [*Arsanovia Ltd v Cruz City 1 (ENG, 2013); Cassa di Risparmio v Rals International Pte Ltd (SG, 2016)*].Here, if the word "Agreement" contemplated all clauses in the container contract save for the arbitration clause it would in fact be inconsistent with its ordinary meaning. [*BCY v BCZ (SG, 2016)*]. An inference that the arbitration agreement forms part of a container contract, i.e., the FSSA, strongly indicates the Parties' intentions to be governed by the law of the FSSA itself. This leads to an invariable conclusion that the implied choice of law for the arbitration agreement stands to be the same as the expressly chosen law of the substantive contract- the law of Mediterraneo.

3. The implied choice of the Parties' leads to the application of the law of Mediterraneo

10. The governing law of an arbitration agreement is to be determined in accordance with a three-step test: (a) the parties' express choice; (b) the implied choice of the parties as apparent from their intentions at the time of contracting; or (c) the system of law with which the arbitration agreement has the closest and most real connection [*Tan/Lee, pp. 141-143; Sul América Cia Nacional de Seguros SA v Enesa Engenharia (ENG, 2012)*]. Since the arbitration agreement does not contain an express choice of governing law, the implied choice should be considered [*Shashoua & Ors v Sharma (ENG, 2009)*]
11. This implied choice between the parties can be evinced from the correspondence between them [*Germany (plaintiff) v France (defendant), (GER, 1998); Switzerland (plaintiff) v Liechtenstein (defendant) (SWZ, 1998)*] The CLAIMANT had put forth that the *Mediterraneo Guidelines for Semen Production and Quality Standards* should be used while formulating the agreement from the beginning itself [*Ex. No. C2, p. 10*]. A reply to the same was provided by the RESPONDENT via the email dated 28 March, 2017 in which they ambivalently replied that they would agree to the law of Mediterraneo depending upon whether the courts of Equatoriana would have jurisdiction [*Ex. No. C3, p. 11*]. In reply to this, a clear expression of unwillingness by the CLAIMANT was given to the idea of jurisdiction under the courts of Equatoriana, and an alternative of arbitration under the law of Mediterraneo was provided. As a part of the internal policy of the CLAIMANT, a special approval was required with regards to submitting a contract to foreign law or providing for dispute

resolution in the country of a counterparty [*Ex. No. R2, p.34*]. The acceptance of a neutral seat as a compromise, was in light of the application of the law of Mediterraneo. Hence, the implied choice of the parties was to be submitted to the law of Mediterraneo.

12. Finally, in the FSSA, the laws of Mediterraneo were clearly agreed upon by the RESPONDENT to govern the sales agreement [*Ex. No. C5, p. 13*]. No choice of law clause was added in favour of the arbitration agreement as well, showing implied acceptance to be governed by the law of Mediterraneo. Hence, looking at the correspondence between the parties, a clear presumption of the arbitration agreement being governed by the law of Mediterraneo in eminent.

4. Alternatively, the law derived by application of closest-connection test is also the law of Mediterraneo

13. The closest connection test comprises of considerations of the laws of the contracting states, the place of contracting, and the nature of agreement [*Compagnie Tunisienne de Navigation SA v Compagnie d'Armement Maritime, (ENG, 1970)*; *Whitworth Street Estates Ltd v James Miller, (ENG, 1970)*] constitute strong presumptions to the law governing the arbitration agreement. This is based upon the "most-significant relationship" of the agreement towards the law which the parties wish to govern themselves with [*Born II, pg. 830*]. The test can be followed to determine the law of the arbitration agreement, if there is no express or implied choice of law [*Sul América Cia Nacional de Seguros SA v Enesa Engenharia (ENG, 2012)*].

14. The laws of the contracting Parties, i.e., Equatoriana and Mediterraneo are a verbatim adoption of the UNIDROIT Principles of International Commercial Contracts, with certain exceptions [*P.O. No. 1, p. 52, para 4*]. This leads to the general favour towards Mediterranean law to have closer proximity to the present arbitration agreement as both contracting parties have the same law. Moreover, it is clearly established that Mediterraneo was the place of contracting between the parties [*P.O. No. 2, p. 56, para 13*]. Also, the nature of the agreement has to be determined with respect to the identity and essence of the FSSA, which has been constituted taking into account the *Mediterraneo Guidelines for Semen Production and Quality Control* [*Ex. No. C2, p. 10*]. This establishes that Mediterranean law governs the general subject matter & nature of the agreement.

15. Considering all these factors, the closest connection of the law of arbitration is the law of Mediterraneo and not Danubian Law. Hence, the laws of Mediterraneo should govern the present arbitration agreement.

16. Therefore, the law of the FSSA governs the arbitration agreement as the doctrine of separability is limited in its application and consequently a "natural presumption" in favour of the FSSA is observed. This is further supplemented by the implied choice of the parties and the closest

connection test. Hence, the arbitration law of Mediterraneo governs the present arbitration agreement.

B. The Tribunal has the jurisdiction and power under the arbitration agreement to adapt the contract

19. The Tribunal's jurisdiction to amend the contract must be assessed under the law governing the arbitration [*Brunner I, pg. 494*], which, in the present case is the law of Mediterraneo. It expressly provides for a broad interpretation of arbitration agreements irrespective of the narrow wordings referring to "dispute(s) arising out of this contract" [*Notice of Arbitration, p.7, para. 16; UNCITRAL Model Law, Art. 2*].

20. The Tribunal can adapt the contract because the current claim is a dispute arising out of the FSSA **(1)** and the principle of synchronized competency gives the power to the Tribunal to adapt the contract **(2)**. Additionally, the intention of the Parties must be considered to interpret the arbitration agreement **(3).**

1. The current claim is a dispute arising out of the FSSA

21. The broad interpretation of the arbitration clause allows for an all-encompassing jurisdiction of the Tribunal to hear all disputes arising out of a contract [*Hausmaninger, para 228; Koller, p. 259; Schlosser, para. 420; SGS Société Générale. v. Pakistan (ICSID)*]. The current claim arises from the dispute of outstanding contractual payments [*Email by Claimant, 31 July 2018*, p.3] which the RESPONDENT owes in light of the supplementary agreement between the Parties that is governed by the Arbitration Clause of the FSSA.

22. As per the consistent jurisprudence in Mediterraneo, in contracts governed by CISG, CISG also applies to the conclusion and interpretation of the arbitration clause contained in such contracts [*P.O. No. 1, p. 52, para 4*]. Art. 8 of CISG is involved in the interpretation of the 'statements' made by and conduct exhibited by the Parties who enter into contracts governed by the CISG [*Lookofsky, para. 81*]. The interpretation given to those statements would be the understanding a reasonable person of the same kind would give in such a situation [*Honnold, p. 118, para. 107.1; CISG, Art. 8.3*]. The RESPONDENT agent's (*Mr Greg Shoemaker*) carefully 'drafted' statement put the CLAIMANT under the impression that there was a supplementary agreement to adapt the contract **(a)**, and this act of the agent has been ratified by the CEO **(b)**.

a) The agent's statement indicated a supplementary agreement to adapt the contract.

23. A supplementary agreement refers to any accord agreed upon by the parties in pursuance of fulfilling their obligations under an already existing contractual relationship. Oral agreement in the course of commercial negotiations can also be a binding supplementary agreement [*OCBC v Wong Hua Choon, (SG, 2012)*].

24. The ambiguity in a statement ought to be resolved against the party who formulated it [*Textiles Case (GER, 1990); Kröll, Art. 8 para. 24*]. The RESPONDENT agent had read out a carefully drafted statement to put the CLAIMANT under the impression that adaptation would be agreed to. This statement was drafted anticipating a discussion regarding the rise in tariffs and, so that the CLAIMANT would not stop delivery of the last shipment [*Ex. No. R4, p. 36*]. The agent reiterated their interest in long term business relations, by stating that they were also looking to purchase semen from their second stallion. [*Ex. No. C8, p. 18*]. This only fortified the CLAIMANT's view that the Parties would enter into negotiations for adaptation of price under contract, after the delivery of last shipment. The agent had the opportunity to consider alternate modes of expression, and he chose to hide their meaning *via* a carefully drafted statement by a lawyer [*Ex. No. R4, p. 36; Raiser, p. 284*].

b) Act of the agent has been ratified by the RESPONDENT CEO

25. The acts of an agent acting within his authority directly affect the legal relations between a principal and third party [*UNIDROIT, Art 2.2.3; Trans-Lex Principle II.1*]. The acts of an agent which fall outside the scope of their authority do not bind the principal [*UNIDROIT, Art 2.2.5; Trans-Lex Principle II.3*]. However, the same shall be binding on the Principal, if he authorises or ratifies such an act. [*UNIDROIT, Art 2.2.9; Trans-Lex Principle II.3; Vogenauer, Art 2.2.9, p. 91*].

26. The agent put the CLAIMANT under the impression that there would be negotiations for the adaptation, despite having no authority to do so. However, this action was subsequently ratified by the RESPONDENT CEO. The Parties continued their negotiations post-delivery of the final shipment. Therefore, the RESPONDENT CEO, by acting upon the statement ratified the acts of the agent. In light of the above submissions, the statement of the RESPONDENT indicated a supplementary agreement to negotiate to adapt the price of the goods.

27. An arbitration clause in a contract covers disputes from ancillary or supplementary agreements if such agreements are closely connected, unless provided for otherwise [*Welser/Molitoris, Pg. 26*; *OGH No. 4 Ob 37/01x, (AUT, 2001)*]. In this case, the Parties intended that all disputes arising out of the contract should be decided by arbitration [*FSSA, Cl. 15*]. The claim for outstanding

contractual payments cannot be considered outside the scope of the Arbitration Clause because it is closely connected with the performance of the RESPONDENT in the main contract.

28. Therefore, the claim for outstanding contractual payment is a dispute arising out form the supplementary agreement to the FSSA which is governed by the law applicable to the FSSA

2. The principle of synchronized competencies gives power to the Tribunal to adapt the contract

29. Arbitral powers are conferred by providing for the rules that follow under institutional proceedings [*Osadare, p.2*]. The HKIAC Rules confer on the Tribunal, the jurisdiction to decide a 'dispute' [*HKIAC Rules, Art. 36.1*], which includes the authority to fill gaps, even in the absence of an explicit power in the arbitration agreement [*N.V. Dsitrigas (SWZ, 2001)*]. Additionally, the power of a Tribunal is to be limited to adjudicate 'disputes' does not exclude the power to adapt a contract. [*Brunner I, p. 496*]. A Tribunal's ability to adapt a contract may be derived from the law applicable to the substance of the dispute [*Redfern/Hunter, para. 8-20; Berger, p. 1376*]. If the substantive law recognizes the concept of hardship or changed circumstances, and allows adaptation by courts as a possible legal consequence, the *lex arbitri* will also recognize a Tribunal's jurisdiction to adapt a contract accordingly on the basis of the principle of synchronized competencies. [*Berger, p. 1375*].

30. In the case at hand, the substantive law is the CISG and Mediterranean Contract Law which is a verbatim adoption of the UNIDROIT Principles [*P.O. No. 1, p. 52, para 4*]. The courts of Mediterraneo have the power to adapt the contract either under the hardship clause or Art. 6.2.3 para 4b of Mediterranean Contract Law [*P.O. No. 2, p. 60, para 39*]. Additionally, there is consistent jurisprudence of the courts in Mediterraneo that a standard arbitration agreement is considered to be sufficient to grant a Tribunal the same powers as a court. The Partial Interim Award from the other arbitral proceeding involving RESPONDENT also confirms the powers under Art. 6.2.3 para 4b [*P.O. No. 2, p. 60, para 39*]. Therefore, Clause 15 of FSSA grants the Tribunal the same powers as the courts of Mediterraneo to adapt the contract.

31. Therefore, the principles of synchronized competencies give the Tribunal the same powers as a court of Mediterraneo to adapt the FSSA.

3. Intention of the Parties is to be considered to interpret the arbitration agreement

32. The scope of the arbitration agreement has to be established by means of interpretation and the joint intention of the parties are of foremost importance to determine the scope even when they are not reflected in the wording of the clause [*Welser/Molitoris, p. 19; CISG, Art.8.1*]. According to Article 8 (3), in determining a party's intent or the understanding a reasonable person would have

had, due consideration is to be given to all relevant objective circumstances of the case [*Fruit and Vegetable Case (SWZ, 2008)*], including negotiations and any subsequent conduct of the parties [*ProForce v. Rugby (ENG, 2006); Case no. 11849 (ICC)*].

33. The Parties' intended for the contract to be adapted by an arbitrator in light of a disagreement on any amendment to the FSSA **(a)** and CISG does not require clauses to be evidenced in writing to be included in the contract **(b).**

a) The statement and conduct of parties prove that the parties intended on adapting prices

34. The CISG provides for the common intention of the parties, if determinable, to prevail [*CISG, Art 8.1*]. When it is determined, it would be used in the interpretation of the contract [*Perillo, p.49*]. Adaptation was envisioned under the FSSA, because the Parties reached a consensus to include an adaptation clause during their meeting, which further showed up in Mr Antley's note.

35. Admissibility of oral evidence to prove the existence of a particular fact is implied through the inclusion of the principle of freedom of form under the CISG and the UNIDROIT Principles [*CISG, Art.11; UNIDROIT Principles, Art. 1.2; Niggeman, p.63*]. Therefore, reliance on witness statements to prove a particular fact is possible under its general framework. Ms Julie Napravnik, during her meeting with Mr Antley on the 12th of April, 2017, voiced the importance of the existence of a mechanism to ensure the adaptation of the contract. Mr Antley had stated that it would be the task of the Arbitrators to adapt the contract, if the Parties could not amicably reach a solution [*Ex. No. C8, p.17*].

36. The purpose of a hardship clause is to provide for adaptation in light of there being a change in circumstances [*Oppetit, p. 704*], which is usually linked with the arbitration clause [*Horn, p.190*]. In the present matter, point 3 of the note prepared by Mr Antley after the meeting on 12th of April, 2017, made a reference to connecting the hardship clause with the arbitration clause. Therefore, when read in light of negotiations, there was consensus among the parties to provide for adaptation of the contract in the unlikely situation of there being a discord.

b) CISG does not require clauses to be evidenced in writing

37. Freedom of Form is a general principle on which CISG is based, and is expressly provided for under the Convention [*CISG, Art 11; UNIDROIT, Art 1.2*]. Considering the complexities and vast negotiations involved in the conclusion of international contracts, CISG allows for the parties, in all their wisdom, to agree upon certain conditions, without having to exhaustively evidence the terms in writing [*CISG, Art.11; Wire and Cable Case, (SWZ, 2004)*].

38. In the present matter, the Parties' initial negotiators were Mr Antley and Ms Julie Napravnik. However, due to the fateful accident on 12 April 2017, the negotiations were concluded by different negotiators [*Ex. No. C8*]. The non-inclusion of the adaptation clause in the arbitration agreement was merely an oversight by the new negotiators, caused by the exigencies in finalisation of the FSSA [*Ex. No. C8, p.17*; *P.O. No. 2, p.55, para 7*].

39. The statement and conduct of the Parties prove that they intended to empower the Tribunal to adapt the contract which can be construed even without a written clause in the FSSA.

40. Therefore, the Tribunal is empowered to adapt the contract as the current claim is a dispute arising out of the FSSA as Mr. Shoemaker's statement indicated a supplementary agreement to adapt the contract which was ratified by the RESPONDENT CEO. Further, the principle of synchronized competencies grants the Tribunal to adapt the contract under the contract law of Mediterraneo. Moreover, the intention and conduct of the parties can be construed to give the Tribunal the power to adapt the contract in the absence of a written clause with regard to the same.

C. **Even if Danubian Law applies, the Tribunal has the power to adapt the contract**

41. The Danubian contract law contains the '*four corners rule*' [*PO No. I, p.51, para. II*], that excludes all extraneous evidence for the interpretation of the contract, and limits the scope of interpretation to the wordings of the contract [*Answer to Notice of Arbitration, p. 32, para. 16; Perillo II, pp. 12-13*]. This rule is limited to a rebuttable presumption that the written contract represents the complete agreement of the parties [*FLR, p. 946; Klass, p.1169*]. Therefore, drafting history and preceding communications can be relied upon to interpret a written contract when its terms are ambiguous or incomplete [*Answer to Notice of Arbitration, p. 32, para. 16; Posner, p. 533*].

42. Contrary to the RESPONDENT's averments, Cl. 15 of FSSA fails to set out the scope of the term 'dispute'. The fact that the Parties' have such contradictory interpretations of the clause evidences the ambiguity present therein [*Kenneth, p.1169*]. Thus, the Tribunal may interpret Cl. 15 in light of the negotiations between the Parties. For this purpose, extraneous evidence may be relied upon by the Tribunal [*CISG Advisory Council Opinion No. 3, para. 1.3*].

43. Art. 6.2.3 para 4b of Danubian contract law empowers the Tribunal to adapt a contract if it is authorized by the parties [*P.O. No. 2, p. 60, para 39*]. As discussed earlier, the authority of the Tribunal can be construed from consensus between Ms. Julie Napravnik and Mr. Chris Antley to authorize the Tribunal to adapt the FSSA. [*Ex. No. C8, p. 17*].

44. Further, it is pertinent to note that RESPONDENT put forth conflicting and contrary arguments. The Respondent has averred that extraneous evidence cannot be admitted in light of the '*four coreners rule*'. However, in order to specify the law of arbitration agreement, it has relied upon extraneous evidence [*Answer to Notice of Arbitration, p. 31, para. 13*].

45. Therefore, the Tribunal is authorized to adapt the contract under the Danubian Law.

CONCLUSION TO ISSUE I

46. The law of the FSSA governs the arbitration agreement as the doctrine of separability is limited in its application. Consequently, there is a natural presumption in favour of the law of FSSA, i.e law of Mediterraneo. Under the law of Mediterraneo, the Tribunal has the power to adapt the contract as the current claim is a dispute arising out of contract. Alternatively, the Tribunal still has the power to adapt the contract under Danubian Law.

ISSUE 2: THE CLAIMANT IS ENTITLED TO SUBMIT THE PARTIAL INTERIM AWARD FROM THE OTHER ARBITRATION PROCEEDINGS AS EVIDENCE, EVEN ON THE BASIS OF THE ASSUMED ILLEGALITY OF THE SOURCE.

47. In the present case, due to an unforeseeable change in circumstances, the CLAIMANT is entitled to an adaptation of price of the contract entered into with the RESPONDENT. The RESPONDENT has denied these claims, rejecting the grounds of hardship and adaptation of contract [*Answer to Notice of Arbitration, p. 32, para. 18-21*]. However, it is pertinent to note that the RESPONDENT, in its denials has put forth conflicting arguments and engaged in contradictory behaviour [*Email by Claimant, 2 October 2018, p. 49*]. In order to specify its entitlement to the adaptation and to highlight the contradictory behaviour undertaken by the RESPONDENT, the CLAIMANT seeks to rely upon certain extraneous evidence.

48. Under the HKIAC Rules, the Tribunal has the power to determine the admissibility of evidence, including whether to apply strict rules of evidence [*HKIAC Rules, Art. 22.2*]. The RESPONDENT has averred that the documents are not admissible as evidence as they are protected by rules of confidentiality [*Email by Respondent, 3 October 2018*]. To the contrary, the CLAIMANT shall establish that the Tribunal should allow the submission of the evidence from the other arbitration as it is extremely pertinent to the case. Firstly, the Tribunal has a wide discretion of taking evidence in accordance with the HKIAC Rules and the relevant governing law **(A).** Secondly, the evidence should be admitted on the principles of transparency as it is relevant and material to the present dispute, and cannot be disallowed on grounds on confidentiality **(B).** Thirdly, the evidence is

admissible regardless of its source, and the denial of the same by Tribunal would lead to a violation of the CLAIMANT's rights **(C)**.

A. The Tribunal has wide discretion in taking of evidence

49. An arbitral tribunal's power to determine the admissibility of evidence may be derived from the Parties' agreement, the chosen institutional rules, and the *lex arbitri* [*Böckstiegel, p.2*]. In international commercial arbitration, matters of evidence are governed by party autonomy and parties are to agree on the standard of proof necessary in their dispute. [*UNCITRAL Model Law, Art. 19.1; Mbadugha, p. 231*]. However, in the present case, the Parties have not specifically adopted any rules to guide the admissibility of evidence by the Tribunal. In absence of an express agreement between the Parties, arbitrators can determine the matters of evidence and procedure, unhindered by the national laws of the seat and the underlying contract [*BQP v. BQQ (SG, 2018)*]. The Parties under the contract have expressly chosen to be governed by the law of Mediterraneo, CISG and HKIAC Rules [*FSSA, Cl. 14; FSSA, Cl. 15*]
50. The power of the Tribunal to determine the admissibility of evidence, is a broad and unconstrained discretion [*Caron/Caplan/Pellonpää, p. 621*]. However, while exercising these broad powers, the Tribunal must observe international practices applicable on admissibility of evidence. The IBA Rules on the Taking of Evidence in International Arbitration ("***IBA Rules***") reflect the international practice on the taking of evidence [*Kreindler, p. 157; Marghitola, p. 34; Redfern/Hunter, para. 6.95; Born I, p. 2347 et seq.; El-Ahdab/Bouchenaki, p. 98*] and are frequently used [*Born I, p. 2348; Hill, p. 9; Marghitola, p. 33; Müller, p. 78*]. The Tribunal can refer to these guidelines to determine the issues of admissibility of evidence, specifically the issues of relevancy, materiality and principles of confidentiality that exist in the present case.
51. Therefore, in consideration of the chosen law and the international principles, the Tribunal has wide discretionary powers to determine the admissibility of evidence.

B. The Partial Interim Award from the other arbitral proceedings is admissible as evidence before the Tribunal

52. In international commercial arbitration, the strict rules of admissibility of evidence do not apply, and the evidentiary value and admissibility of the evidence should be considered in light of the circumstances of the case [*Shufelt v. Guatemala*; *McDonald v. City of West Branch (USA, 1984)*]. In consideration of the HKIAC Rules and the law of Mediterraneo, the Tribunal should allow the CLAIMANT to submit the evidence with regard to the other arbitral proceedings as it is material to support CLAIMANT's averments.

53. The CLAIMANT requests the Tribunal to allow for submission of the Partial Interim Award from the other arbitration as evidence. The request is within the ambit of the Tribunal's discretion and is in accordance with international practices. The CLAIMANT has asked for disclosure of evidence which is relevant, material and specific **(1)**; and in accordance with principles of transparency and exempted under duties of confidentiality **(2)**. Furthermore, even if a duty of confidentiality exists, the Tribunal should still admit the evidence from the other arbitral proceedings **(3)**.

1. The evidence is relevant and material to the present arbitral proceedings

54. The IBA Rules represent international best practices, and arbitral tribunals can consult them as a reference point for the taking of evidence even without an explicit agreement or reference to these rules [*Award No. 5243 (VIAC); Case No. 16655 (ICC); Railroad Development v. Guatemala (ICSID); Glamis Gold v. U.S. (ICSID)*]. Parties can submit any additional documents as evidence on which they intend to rely or which they believe have become relevant to the case and material to its outcome [*IBA Rules, Art. 3.11*]. If a party asks the tribunal to take steps to obtain documents from a third party, the tribunal may use its discretion to determine whether the documents are relevant and material and, if they are found to be so, it should take the necessary steps to obtain them [*IBA Rules, Art. 3.9*]. The Partial Interim Award comes within the ambit of such admissible evidence, being relevant and material to the present case.

55. The CLAIMANT received reliable information that the RESPONDENT was involved in arbitral proceedings, under HKIAC Rules, with similar facts as to the present case [*Email by Claimant, 2 October 2018; P.O. No. 2, p. 60, para. 40*]. The dispute in the other arbitration was regarding a dispute arising from the sale of a mare by the RESPONDENT to a buyer in Mediterraneo. Therein, the RESPONDENT asked for a renegotiation of the price in the contract, under the hardship clause citing the imposition of the tariffs on agricultural products by the President of Mediterraneo [*P.O. No. 2, p. 60, para. 39*]. In the "Partial Interim Award" passed on 29 June 2018, the Tribunal had confirmed its power, under a standard arbitration agreement, to adapt the contract should the tariff result in hardship for RESPONDENT [*P.O. No. 2, p. 60, para. 39*]. The CLAIMANT requests the submission of the arbitral award from the aforementioned arbitration as evidence.

56. While Tribunals are generally not bound by the rule of precedent, international case-laws are considered to determine the rules applicable to a dispute [*Béguin, p. 6; Casado v. Republic of Chile (ICSID)*]. Tribunals generally take account of the precedents established by other international tribunals [*El Paso International Co. v. Argentine Republic (ICSID)*] and do certainly carefully consider such decisions whenever appropriate [*B.I.T. v Pakistan (ICSID); Jan de Nul N.V. v. Egypt (ICSID)*]. The Tribunal should consider the Partial Interim Arbitral Award as the facts and circumstances of

the case, and the legal issues arising therein are quite similar. As both cases share substantial features, the consideration of the same by the present Tribunal is relevant to the present case and is material to the CLAIMANT's submissions.

57. Evidence from other proceedings can be tendered to show that the opposing party has made contradictory assertions in different fora or has been selective in evidence submission in one or both [*Waincymer, p. 789*]. The facts of the other arbitration show that the RESPONDENT, when faced with a similar hardship of an unforeseen tariff justified the existence of these grounds as to request an adaptation of the price [*P.O. No. 2, p. 60, para. 39*]. However, in the present case the RESPONDENT vehemently refutes to necessitate the same despite the existence of a harsher tariff imposed upon the CLAIMANT. Such a stance taken by the RESPONDENT is highly contradictory in nature and also opposed to its duty to act in good faith.

58. The principle of good faith is a cornerstone of arbitral proceedings and it is imperative that the Parties abide by it [*UNIDROIT Principles, Art. 1.7; CISG, Preamble*]. While Art. 36.2 requires an express agreement between Parties to decide the matter *ex equo et bono,* the same is evidenced by the express choice of the parties to be governed by the law of Mediterraneo and CISG. In the present case, and the RESPONDENT has not acted in accordance with good faith principles. The admission of the Partial Interim Award would prove that the RESPONDENT has made contradictory assertions before the Tribunal. The proof of this duality in behavior of the RESPONDENT s is relevant and material to the CLAIMANT's case.

59. Thus, a perusal of the Partial Interim Award is an essential material evidence being put forth by the CLAIMANT which is relevant to the present proceedings.

2. The request for disclosure of the Partial Interim Award is in accordance with principles of transparency and confidentiality

60. The duty of confidentiality should not be viewed as absolute, but needs to be qualified in each instance [*Brown, p. 989-1001*]. While an arbitral tribunal has an implied duty not to disclose documents used in an arbitration, the confidentiality is limited where the disclosure is necessary for the fair disposal of an action. [*Dolling-Baker v. Merrett (ENG, 1990)*] The RESPONDENT has asserted that disclosure of the award would be in contravention of the duty of confidentiality under Art. 42 of the HKIAC Rules [*Email of Respondent, October 3, 2018*]. However, in order for the Tribunal to make an accurate award, it is necessary for the Tribunal to consider all the relevant facts and circumstances.

61. The Claimant shall establish that duty of confidentiality does not restrict the disclosure of the Partial Interim Award **(a),** and that the principles of transparency permit the disclosure the Partial Interim Award **(b)**.

a) The duty of confidentiality does not restrict disclosure of Partial Interim Award

62. While deciding upon the admissibility of material, arbitrators should take into consideration the international public policy and applicable privilege rules. The Tribunal must determine whether documents are confidential and, whether they ought to be excluded from evidence [*Art. 9(2)(e) IBA Rules; Müller, p. 71; Perkins, p. 273*]. The Tribunal has to balance diverging interests and has to determine if reasons exist which outweigh the confidentiality interests. It may consider possible impacts on the parties or the relevance of the documents [*Foreman v. Kingstone (NZ, 2003); Schmidt v. Rosewood Trust (ENG, 2003); Metzler, p. 252*].
63. Under HKIAC Rules, there are no limits on the permissible scope of disclosure or discovery; and the communication of information in order to protect a legal right or interest of a party is permissible even under the duty of confidentiality [*Haley, p. 13; HKIAC Rules, Art. 45.3*]. In order to ensure fair proceedings, the Tribunal has a duty to allow each party to present the relevant facts and views of the case [*Gbangbola & Lewis v. Smith Sherriff (ENG, 1998); Baldwin, p. 233*]. To present all the relevant facts, it is necessary for the CLAIMANT to submit the evidence from the other arbitral proceedings. The need for a disclosure of the Award outweighs any confidentiality concerns that have been raised by the RESPONDENT.
64. Even if the Tribunal does not consider the present circumstances to fall within the exceptions to the duty of confidentiality, it is pertinent to note that the CLAIMANT is not bound by the duty of confidentiality. Confidentiality is only protected if any publication of arbitration materials amounts to a violation or substantial prejudice as envisioned by the confidentiality agreement between the Parties [*Aegis Case (ENG, 2003)*]. Duty of confidentiality under HKIAC, is imposed upon parties to arbitration, arbitral tribunal, any emergency arbitrator, expert, witness, tribunal secretary and HKIAC [*HKIAC Rules, Art. 45.1; HKIAC Rules, Art. 45.2*]. This implies that the duty of confidentiality as imposed by HKIAC Rules on the other arbitral proceedings, would not be applicable upon the CLAIMANT as they were not party to such a confidentiality agreement. Hence, there is no violation of any confidentiality duties that the CLAIMANT is encumbered with.

b) The principles of transparency permit the disclosure the Partial Interim Award

65. General principles provide for the basic framework in interpretation when any uncertainty arises in the application of law [*Gaillard, pp.161-172*]. The UNCITRAL Transparency recognizes the

importance of transparency as a tool for promoting and ensuring effective democratic participation, good governance, accountability, predictability and the rule of law [*Secretary-General's report on transparency*]. Therefore, UNCITRAL Transparency Principles can be referred to provide clarity and conformity to general principles. Transparency in an arbitration guarantees democratic principles such as the right of access to information and also promotes fairness, rule of law, equity, and due process [*Reith, pp.297-300*]. Disclosure based upon the duty of transparency would be allowed if the applicant: identifies with precision the excerpts it wishes to use; describes the specific purpose for which the identified excerpts would be put to use; and explains the reasons why such publication is deemed necessary [*Burlington Resources Inc. v. Ecuador (ICSID)*].

66. As discussed above, the Partial Interim Award is relevant and material to the present arbitral proceedings. The disclosure of any arbitral award is appropriate without party consent if disclosure is reasonably necessary for the protection of the party's rights or in the interest of justice [*Hassneh v Steuart J. Mew (ENG, 1993)*]. The disclosure of the Partial Interim Award is instrumental to the CLAIMANT's case, without the same they would be unable to present the Tribunal with all the relevant facts and circumstances, which is essential for the Tribunal to pass a just and fair award.

67. Therefore, the disclosure of the Partial Interim Award is necessary in the interests of justice and outweighs any duty of confidentiality. Moreover, the disclosure would be in coherence with the prevailing principles of transparency.

3. Even if information is confidential, Tribunal should allow its submission

68. Even if the Tribunal believes that the award from the other arbitral tribunal contains confidential information, the Tribunal should still admit the same, accompanied by a recourse to address these issues, as the interests for such a disclosure are justified. [*Milsom & Standish v. Outen & Ablyazov (UK, 2011); Myanma v. Win (SG, 2003); Quinto/Singer, p. 205*]. The Tribunal can allow for the joinder of the party from the other arbitration to the present arbitral proceedings **(a)**, or give a protective order **(b)**.

a) The other party can be joined to the present proceedings

69. A joinder of the party from the other arbitral proceedings, as suggested by the CLAIMANT, [*Email by Claimant, 2 October 2018*] would ensure that there is no violation of confidentiality. The Tribunal can allow for additional joinder of parties to an arbitration, if all parties consent to the same [*HKIAC Rules, Art. 27.1.b*]. While Art. 27.3 requires such a request to be made prior to the Statement of Defence, the limitation provided can be exceeded in case of exceptional

circumstances. The Tribunal can consider the concerns for confidentiality to allow for such a request beyond the limitation period. If the RESPONDENT, or the other party to the Award have any concerns regarding the disclosure of sensitive information, the other party can be joined to the arbitration and can protect their interests in the same. In such circumstances, the question of a breach in confidentiality does not arise.

b) Protective order can be passed to protect confidentiality

70. Protective orders can be used to preserve confidential information from disclosure, through an explicit duty of confidentiality or redacting parts of the text [*Born I, p. 2388; Zuberbühler/Hofmann/Oetiker/Rohner, Art. 9, para. 53*]. Such measures are in line with international practices [*IBA Rules, Art. 9.4*]. The Tribunal has a wide discretion regarding the admission of evidence, and decide if and which protective order may be necessary and suitable. If the RESPONDENT wishes to preserve certain sensitive business information, the Tribunal can pass a protective order with regard to the same. The redaction of parts of the text by blacking out confidential parts which do not necessarily have to be disclosed, is a possible alternative to ensure no trade secrets are leaked, as per the concern of the RESPONDENT. Consequently, disclosing the arbitral award with a protective order would permit CLAIMANT to receive the relevant and necessary facts to prove its claim. At the same time, it would allow RESPONDENT to protect compelling confidential information from unlimited disclosure.
71. Therefore, RESPONDENT'S concerns about confidentiality can be amicably mitigated by the Parties by a joinder of the other party to the current proceedings and the Tribunal may issue protective orders in furtherance of the same.

C. Denial of submission of evidence on the basis of alleged illegality of source would violate the principles of fair treatment

72. Findings in ignorance of vital evidence will result in perverse decisions [*Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*]. The right to be heard entails that each party should have an equal opportunity to express its views on all crucial points the tribunal intends to adopt [*Petrochilos, § 4.86*]. In particular, it entitles the parties to participate in the proceedings and submit evidence [*BG 15 September 2000 (SWZ)*].

73. The RESPONDENT has claimed that the evidence in consideration has been retrieved through illegal means and should not be admitted in the arbitration. The RESPONDENT has suggested that the

source of information was either two former employees of the RESPONDENT, or a hack of the RESPONDENT's computer system. However, the information about the other arbitral proceedings was received by the CLAIMANT at the annual breeder's conference and they did not engage in any illegal activities to retrieve such information [*P.O. No. 2, para 40, p. 60*].

74. The denial of submission of evidence by the Tribunal would be against the interests of justice as, it would be in violation of the CLAIMANT's right to be heard and the fair treatment principle **(1).** Moreover, even on the assumption that the information is from an illegal source, the Tribunal should still admit the evidence as it is relevant and material to the present case **(2).**

1. Denial of submission of evidence would violate CLAIMANT's right to be heard and the fair treatment principle

75. The right to be heard is a fundamental principle of a fair proceeding and a procedural safeguard [*Baldwin, p. 233; Schwarz/Konrad, para. 20-031*]. The Parties must have the opportunity to present the relevant facts and views of the case, [*Gbangbola & Lewis v. Smith Sherriff (ENG, 1998)*; *O'Malley, para 9.115*] and also be able to participate in the taking of evidence [*Duarib v. Jallais (FRA, 1998); Decision of the Federal Constitutional Court (GER, 1985)*]. This is in line with the principle of fair treatment which demands that each party must have had an appropriate opportunity to present its case without a significant disadvantage to the other party [*Schwarz/Konrad, para. 20-017; IBA Rules Art 9.4*].

76. The Tribunal has a responsibility to ensure equal treatment of the parties and afford the parties a reasonable opportunity to present their case [*HKIAC Rules, Art. 13.1; UNCITRAL Model Law, Art. 18; IBA Rules Art 9.3(e)*]. In order for the CLAIMANT to present all relevant facts and arguments, it is necessary to submit the Partial Interim Award from the other arbitral proceedings. Only with the award, would the CLAIMANT be able to specify the need for adaptation of price in the contract, in consideration of the circumstances of the present case, which are similar and have been dealt with in the Partial Interim Award [*P.O. No. 2, p. 60, para 39*]. Denying a reasonable opportunity to present its case would be unfair to the CLAIMANT. Moreover, any such award passed thereafter would be in violation of their right to be heard and would be liable to be annulled [*X v. Y (SWZ, 2012); UNCITRAL Model Law, Art.34.2(a)(iv)*].

2. The Partial Interim Award is admissible regardless of illegality of the source

77. The right to present evidence can only be denied in case the evidence offered is not admissible, suitable or relevant [*Jaksic, p. 239*]. An arbitral tribunal may admit as evidence, data or documents that were illegally obtained, for instance, by hacking of a computer network [*Caratube Case (ICSID)*].

It is the responsibility of the Tribunal to ensure that rights of the Parties to present their case is not harmed and the susceptible source of evidence cannot be the sole grounds for denial of this right [*RosInvestCo UK Ltd. v. Russia (SCC)*]. When an arbitral tribunal is presented with glaring evidence and ignores its existence and relevance, it would lead to a travesty of justice [*ConocoPhilips Case, dissent*].

78. As per the doctrine of 'clean hands', the party seeking to admit any evidence may be barred to do so if it is found that the wrongdoing was done by the party seeking to benefit from that evidence [*Moloo/Khachaturian, p. 1485*]. The RESPONDENT has falsely alleged that the information with regard to the other arbitration has been obtained by the CLAIMANT through illegal means, being breaching confidentiality, or through an illegal hack [*Email by Respondent, 3 October, 2018*]. Even if the Partial Interim Award was sourced through illegal means, the CLAIMANT has not in any way participated in the illegality. The RESPONDENT himself admits that the information may have leaked either through a hack in the RESPONDENT 's computer system or through its former employees [*Email by Respondent, 3 October 2018*]. The CLAIMANT has acted on the information received through reliable sources and not engaged in any illegal activities to retrieve information regarding the Partial Interim Award.

79. Furthermore, the Tribunal has the discretion to deny the evidence on grounds of procedural fairness and equality of Parties [*Caratube Case (ICSID)*]. The admission of evidence would not harm the procedural fairness and equality in any manner.

80. Moreover, to ensure that the procedural fairness and equality of Parties remains intact the CLAIMANT has suggested multiple methods to ensure there is no harm to the confidentiality of the parties of the previous arbitration. In light of the same, there is no reason for the Tribunal to deny the admission of the evidence in consideration.

CONCLUSION TO ISSUE II

81. The Tribunal has wide discretionary powers with regards to determination of admissibility of any evidence presented before it. The Partial Interim Award from other proceedings should be admitted as evidence because it is relevant to the current proceedings. Additionally, the request for disclosure of the Partial Interim Award is in accordance with the principles of transparency and confidentiality and the Tribunal can allow it to be submitted even if the Award is confidential. Further, the denial of submission of the Partial Interim Award will violate Claimant's right to be heard and the principle of fair treatment and it should be admitted regardless of illegality of the its source.

ISSUE III: THE CLAIMANT IS ENTITLED TO THE PAYMENT OF US$ 1,250,000 OR ANY OTHER AMOUNT RESULTING FROM AN ADAPTATION OF THE PRICE.

82. In the present case, the Parties had agreed the Claimant would not be responsible for hardship arising out of additional health and safety requirements or comparable unforeseen events [*FSSA, Cl. 12*]. The imposition of the 30% tariffs caused considerable hardship to the Claimant, thereby disrupting the contractual equilibrium, making the performance of a contract substantially more onerous [*UNIDROIT Principles, Art. 6.2.2*]. The purpose of the hardship clause was to provide for adaptation in light of changed circumstances [E*x. No. C8, p.* 17], as it is a legal consequence of hardship [*Maskow, p.661*]. Furthermore, the law governing the FSSA, i.e., CISG, also allows for adaptation in light of changed circumstances as a general principle. In the present case, the Claimant is entitled to US$1,250,0000 from adaptation of the contract in light of hardship.

83. The RESPONDENT erroneously argues that adaptation is possible neither under the hardship clause nor under CISG. The CLAIMANT is going to demonstrate that Clause 12 provides for adaptation of price (A), and that not all the DDP risks were to be borne by the CLAIMANT (B). Alternatively, CISG also allows for price adaptation (C), that the amount claimed is due in light of modification of contract (D), and that the Tribunal may adapt the contract in good faith (E).

A. Clause 12 provides for adaptation of price

84. The purpose of a hardship clause is to provide for adaptation [*Oppetit, p. 704*]. The intent of the parties is relevant in interpreting the same [*CISG, Art. 8*]. In light of the same, the Tribunal should adapt the price to restore the contractual equilibrium. Clause 12 should be given a wide interpretation **(1),** increase in tariffs is within the ambit of clause 12 **(2).**

1. Clause 12 should be given a wide interpretation

85. The matter of whether the contract or a provision is ambiguous is a question of law for the court. [*International Multifoods Corp. (2002); Bailey, (2007); Greenfield (2002); W.W.W. Associates, (1990)*]. An ambiguity in a provision exist when it suggests more than one meaning to a reasonably intelligent person who has examined the context of the entire agreement. In such a situation the custom and usage is to be considered by the court where necessary to understand the context in which the parties have used terms that are specialized. [*Fox Film Corp, (1937)*].

86. The Tribunal's examination of the Parties' respective claims and defenses cannot be undertaken in a vacuum and contract should be read as a whole to ensure that undue emphasis is not placed upon particular words and phrases, and to render any individual provision superfluous [*Law*

Debenture Trust Co. v. Maverick Tube Corp. (US, 2010)]. An interpretation gives a reasonable and effective meaning to all terms of a contract is generally preferred to one that leaves a part ineffective [*Galli v. Metz (US, 1992)*].

87. The FSSA exonerates the CLAIMANT from being responsible for hardship which has been caused by additional health and safety requirements or comparable unforeseen events, making the contract onerous [*FSSA, Cl. 12*]. The fact that tariffs were not explicitly included at the time of conclusion of the contract was due the non-foreseeability of the same [*Ex. No. C8, p.16; Ex. No. C6, p.15*].

2. Increase in tariffs is within the ambit of Clause 12

88. Hardship encompasses circumstances in which the performance has become radically onerous and leads to commercial impracticability [*Coronation Case (UK,1903)*]. It indicates a situation where the alteration of certain factors, including political and economic, results in unfortunate consequences for a party. [*Strohbach, p.01, para 1*]. It is critical that the distortion of the contractual equilibrium did not constitute a normal risk associated with the contract, or a risk that the parties agreed to assume [*Carlsen, para. 15*]. Substantial financial hardship is hardship can be decided on the particularities of each case, This can only be determined on a case-by-case basis,[*Brunner II, pp. 426 and 427; Schlechtriem/Schwenzer, p. 1076*] considering various parameters including the following: the cost increase in percentage; the value of the counter-performance to be received by the obligor; the obligor's financial situation [*Schwenzer, p. 716*] the nature of the contract, in particular whether it is a long-term contract; and the often decisive specifics of any possible explicit or implicit risk allocation by the parties [*Da Silveira, pp. 347-348*].

89. The FSSA expressly stated the Seller was not liable for hardship arising from additional health and safety requirements and "comparable unforeseen events" [*FSSA, Cl. 12*]. This increase in tariffs is within the ambit of "comparable unforeseen events" **(a),** and risk of rise in tariffs not being expressly included was due to its unforseeabiltiy **(b).**

a) Increase in tariffs is within the ambit of "comparable unforeseen events"

90. The statements of a party have to be construed in accordance with the actual understanding which the parties had at the time they entered into an agreement. [*CISG, Art. 8.1; Tepper Realty Co., v. Mosaic Tile Co.; CLOUT Case No. 429*] This intent of the Parties should be interpreted subjectively, according to their conduct, as long as the other party to the contract was aware of that intent [*CLOUT case No. 222; CLOUT case No.268*], or could not have been unaware of it [*CLOUT case*

No. 1034; CLOUT case No. 98]. The term "comparable unforeseen events" should be interpreted in accordance with the intention of the parties.

91. In the present case, the CLAIMANT had been making losses since 2014 and was dependent upon its financial credit lines [*P.O.No.2, p. 59, para. 29*]. The RESPONDENT was aware of the CLAIMANT's prevailing financial difficulties [*P.O No.2 , p.58, para 22*]. At the onset, the RESPONDENT had clearly stated its intention to maintain long-term business relations with the CLAIMANT. The prolongation of the two main credit lines of the CLAIMANT was dependent on the profits which would arise from this long-term relationship. However, this would not be possible if the CLAIMANT were to shoulder the cost of increased tariffs [*P.O.No.2, p. 59, para. 29*]. When the CLAIMANT was preparing the final delivery of 50 doses of Semen, the newly imposed tariffs made the shipment 30% more expensive than anticipated, destroying the financial viability of the contract. This destroys the commercial equilibrium of the contract specifically to the detriment of the CLAIMANT [*Ex. No. C8*].

92. The CLAIMANT agreed to undertake the DDP mode of delivery, without being liable for all the risks which entailed from it. In the past, additional health and safety requirements necessitated highly expensive tests, and these destroyed the commercial basis of the contract, and almost resulted in the insolvency of the CLAIMANT [*Ex. No. C4, p.12; P.O. No. 2, p. 56, para. 21*]. The intention behind stating these was to highlight the issues which had previously destroyed a contract's commercial basis. Therefore, "comparable unforeseen events" to health and safety requirements would include other events wherein the commercial basis of the contract would be destroyed. Hence, the increase in tariffs falls within the ambit of "comparable unforeseen events".

b) Increase in tariffs was unforeseeable

93. To adopt a hardship excuse, it is pertinent that the event causing the alleged hardship be "unforeseeable". ["CMS Gas Award"(2005); Himpurna California (2000)]. The question whether a certain impediment was foreseeable should be considered on an objective basis, according to the criterion of the test of a reasonable man [*Scaforn International BV & Orion Metal*]. The "reasonable person" test in light of foreseeability would require to examine whether a reasonable person of the same kind could have foreseen [*Graffi, p. 340*]. However, the personal qualities of the party in breach are not relevant for the foreseeability test as the test ought to be conducted on objective grounds [*Enderlein/Maskow, p. 116*]. A consideration of whether business people of the same kind would have foreseen the event is also required to be undertaken [*Schlechtriem/Schwenzer, p. 179*].

94. The reason for not expressly including tariffs was because no such tariffs had been imposed in the past. Besides, Equatoriana had always been an ardent supporter of free trade, and had almost never resorted to retaliatory measures [*Ex. No. C6, p.15*]. Fortifying this is the fact that both Mediterraneo and Equatoriana are members of the WTO [*P.O. No. 2, p.61, para.* 47]. Disputes in the past have always been resolved amicably or by invoking the relevant WTO dispute resolution mechanism [*Ex. No. C6, p.15*]. Hence, the retaliatory tariffs imposed by the RESPONDENT Country were not foreseeable. In light of the above submissions, the RESPONDENT was liable to bear the impugned increase in tariffs despite accepting a delivery DDP. The increase in tariffs caused a financial hardship for the CLAIMANT. Thus, the increase in tariffs falls under the broad interpretation of Clause 12.

c) Changed circumstances necessitate adaptation of price

95. A general principle of adaptation of contract in light of changed circumstances albeit in a restrictive manner, is well recognised [*Case No. 1512 (ICC); Case No. 4761 (ICC); Libyan American Oil Company v. Government of the Libyan Arab Republic (US, 1981); Brunner I, p. 417*]. A contracting party who is affected by hardship has the right to propose a reasonable adaptation of the contract to suit the changed circumstances [*Gesetzblatt, p. 61; Maskow/Wagner, p.* 658] A radical social, economic or political change which significantly affects performance of a contract, allows the parties to terminate the contract or at least to request for adaptation [*Case No. 7365 (ICC)*].

96. In light of the changed political and economic climate of Mediterraneo, there was an increase in tariffs for import [*Ex. No. C6, p.15*]. Subsequently, retaliatory tarrifs were imposed by the government of Equatoriana [*Ex. No. C6, p.15*]. The increased tarrifs distorted the contractual equilibrium, rendering the performance substantially onerous on the CLAIMANT. And it is submitted that the CLAIMANT is not in position to bear the extra tariff of 25% and is only asking for the same to restore its contractual equilibrium. Therefore, these change in circumstances necessitate an adaptation of price.

B. Not all DDP Risks were to be borne by the CLAIMANT

97. Under Delivered Duty Paid ("***DDP***"), the seller is responsible for arranging carriage and delivering the goods at the named place, including taking responsibility for import clearance and payment of taxes. The risk transfers from the seller to the buyer only when the goods are made available to the buyer [*Incoterms, 2010*]. It is a general principle of law that each party shall bear the costs of performance of its obligations unless the parties have agreed to the contrary [*Trans-Lex Principles, V.1.5*].

98. The CLAIMANT had undertaken the DDP mode of delivery against a moderate price increase [*Ex. No. C4, p.12*]. However, it was not ready to bear all the risks associated with such a delivery. [*Ex. No. C4, p.12*] Hence, post negotiations, the RESPONDENT undertook certain risks in return for a reduction in the overall price [*P.O. No. 2, p. 56, para. 8*]. Hence, the assertion of the RESPONDENT that the unexpected tariffs fall within the purview of the DDP is erroneous.

99. Henceforth, the CLAIAMNT has no liability to bear any import duty as it had made clear that it won't borne any extra risk resulting from Health and Safety standard and rise in tariffs. And it only accepted DDP delivery for the purpose of smooth and safe transportation and was not be held responsible for various duties to be paid under it.

C. Alternatively, CISG also allows for adaptation of price

92. The doctrine of party autonomy is a concept enshrined under the CISG and the UNIDROIT Principles [*CISG, Art. 6; UNIDROIT Principles, Art 1.5*]. The purpose of party autonomy is to provide the contracting parties with the freedom to choose the law applicable to their contractual relationship [*Borisova, p. 43*]. The Parties may, in their wisdom, derogate from certain provisions, and provide for tailored clauses in the contract to govern them. However, in situations where the contract does not provide for, or, a "gap" exists, the CISG would be resorted to [*Mcmahon, Art. 7; Waincymer, p. 1056; Brower, p.17*]. In the present matter, even if the hardship clause [*FSSA, Clause 12*] does not cover the present situation i.e. the imposition of additional tariffs, the CISG could be resorted to, to adapt the price [*CISG, Art. 79; CISG, Art. 53*].

93. The RESPONDENT erroneously argues that the CLAIMANT is not entitled to receive an increased remuneration resulting from an adaptation of the contract. It bases its arguments on the grounds that Art 79 of the CISG does not regulate hardship and does not provide for the remedy requested by the CLAIMANT. However, the CLAIMANT that the aforesaid provision in fact regulates hardship **(1)** and also provides for the remedy requested for by the CLAIMANT **(2)**. The Claimant is also going to prove that an amount of US$1,250,000 is due in light of modification of contract **(3)**. Alternatively, the CLAIMANT is going to prove that if Art 79 does not regulate hardship, then the Tribunal may adapt the contract under the principle of good faith **(4).**

1. Art 79 CISG governs the situation of hardship

94. Under CISG, a party is exempted from liability in case of non-performance, if the same was due to an "impediment" beyond its control [*CISG, Art. 79.1*]. "Impediment" is not restricted to situations where performance is absolutely impossible [*CISG Advisory Council Opinion No. 7, para.*

3.1]. The express provision for "force majeure" under Art. 79.1, does not implicitly exclude the relevance of hardship [*Scafom International BV v. Lorraine Tubes S.A.S (BGM,2009)*; *Bonell, p. 590*]. The standard of exemption includes economic impossibility and excessive onerousness too [*Arbitral Award of Hamburg dated 21 March 1996*]. The only requirement is that the change in circumstances must be unforeseeable [*Steel Ropes case; Steel Bars case*].

95. In the present case, while the imposition of tariffs did not make the performance of the contract impossible, it resulted in excessive economic hardship on the CLAIMANT. The newly imposed tariffs at the time of delivery of the last shipment, made the transaction 30% more expensive than anticipated, destroying the financial viability of the contract.

2. Adaptation of price is possible under the CISG

96. CISG is an autonomous and self-contained body of law [*Felemegas, pp. 115 – 379*]. There are some issues which are excluded from the CISG's sphere of application, i.e. "external gaps" or *"lacunae praeter legem"* [*CISG, Art. 4.5*]. There are some matters, however, which are governed under the CISG, but not expressly settled under it, i.e. "internal gaps" or *"lacunae intra legem"*. In such cases, the gaps would be settled in conformity with the general principles on which the CISG is based [*CISG, Art. 7.2*]. CLAIMANT is going to demonstrate that adaptation is not expressly settled in the CISG **(a)**, and adjustment in light of changed circumstances is a general principle on which the CISG is based **(b)**.

a) Adaptation is not expressly settled in the CISG

97. A "gap" is anything unresolved in the CISG, relating to the area of law the CISG governs, which is not excluded from the Convention. [*Gebauer, pp. 695 – 696*]. There exist no guidelines under the Convention for adapting or adjusting the terms of a contract [*CISG Advisory Council Opinion No. 7, ¶ 40*]**.** Adaptation, being a remedial measure for disturbance in the performance of a contract, it is a matter governed by the Convention [*Schlectriem -CISG Workshop, p.237*].

98. Therefore, there exists an internal gap in the CISG with regards to adaptation. It ought to be settled in conformity with the general principles on which the CISG is based [*CISG, Art. 7.2*]. The UNIDROIT Principles may also be relied upon to fill in the gaps within the CISG [*Kotrusz, para 2.2*].

b) Adjustment in light of changed circumstances is a general principle on which the CISG is based

99. The general principles of the CISG are not expressly laid down, but have evolved through scholarly writings and case laws [*Magnus, p. 477; Kotrusz, para 2.2; Viscasillas, p. 287; Garro, p.1149; Jansen, p. 271*]. These principles may be resorted to fill in the internal gaps in the CISG [*CISG, Art. 7(2)*]. General principles can be ascertained from a single provision, where its parameters can be generalised to similar situations [*Magnus, p.477*].

100. Under the CISG, the remedy of price reduction under Art. 50 is an adjustment to the contract, reflecting a disturbed balance between performance on one side and obligation on the other side [*Schlectriem – CISG Workshop, p. 237*]. This remedy acts as an instrument for adjusting the disturbed balance of performances [*Schlectriem – CISG Workshop, p. 237*]. The principle of adjusting the economic equilibrium in cases of severe hardship emanates from the aforementioned general principle.

101. The general principles may also be derived by analysing several articles and finding an overarching purpose [*Magnus, p.476*]. Art. 50, read in consonance with Articles 29 & 55, also indicates the presence of the general principle of adaptation or adjustment in light of changed circumstance. Article 29 talks about modification or adjustment of a contract by mere agreement between parties. Parties are free to negotiate, reach a general consensus and modify the terms of a contract unencumbered with any formalities [*Bergsten, para. 5*] Usually, parties would negotiate in situations wherein a particular party is unfairly being enriched. Article 55 deals with "open price" contracts. A particular contract may have open terms, if it depends on uncertainty, or where the contingency may be valued differently and there is no market to price the contingency [*Gergen, p. 1004*]. Therefore, the general principle of adjustment or adaptation to meet the change in circumstances, is envisioned under CISG.

102. Article 6.2.3 UNIDROIT deals with the effects of hardship. It entitles the disadvantaged party to renegotiations [*UNIDROIT, Art. 6.2.3(1)*]. It vests the Court with a power to adapt the contract with a view to restoring its equilibrium [*UNIDROIT Principles, Art. 6.2.3(4)(d)*]. Arbitral Tribunals possess the same powers as a Court under a standard arbitration agreement, to adapt contracts [*P.O. No. 2, pg 60, para 39, "Partial Interim Award"*]. Therefore, the Court or Arbitral Tribunal may adapt the contract in light of changed circumstances by relying on the UNIDROIT Principles.

103. The RESPONDENT has erroneously argued that the adaptation of the contract is not possible under CISG [*Answer to Notice of Arbitration, p.32, para 21*]. However, the general principle of adaptation in light of changed circumstances is manifest in CISG. This implies that the claim of adaptation of

price is allowed under CISG. Hence, the Tribunal can adapt or adjust a contract in light of the disturbed equilibrium or hardship.

3. Adaptation is a remedy available under Art. 79(5)

104. Parties to a contract are prohibited from claiming damages for failure to perform an obligation, if the failure was due to an impediment beyond the control of the non-performing party [*CISG, Art 79(5)*]. However, the aggrieved party may exercise any other right or remedy it possesses under the Convention.

105. A Court or an arbitral tribunal may, determine what is *owed* by one party to another, thereby "adapting" the contract to a change in circumstances [*CISG, Art. 79.5; CISG Advisory Council Opinion No. 7, para. 40*]. In the present matter, there was an unforeseen change in circumstances, i.e, increase in tariffs, which led to an increase in costs of delivery [*Ex. No. C6, p.15; Ex. No. C8, p.17*]. Moreover, these costs were not to be borne by the CLAIMANT under DDP [*Ex. No. C4, p.12*]. Hence, the RESPONDENT owes the CLAIMANT the amount it bore due to the tariff increase. This amount is can be claimed under Art. 79 of CISG, and the Tribunal can adapt the contract in light of same.

D. The claimed amount is due in light of modification of contract

106. Modification of a contract is possible by mere agreement between parties [*CISG, Art. 29; UNIDROIT Principles, Art. 2.1.18; Trans-Lex Principle IV.1.2*], and there is no requirement as to form [*CISG, Art.11; Wire and Cable Case (SWZ, 2004)*]. Art. 29 allows for the modification of a contract for outstanding payment [*Germany (plaintiff) v Switzerland (defendant) (SWZ,1998); Bergsten, p. 51*]. In the present matter, the price had been modified due to the statement of the RESPONDENT and this results in an outstanding contractual payment due, to the CLAIMANT.

107. The modification of a contract can be done though actions [*CISG, Art. 29*] In the present case, the agent put the Claimant under the impression that there would be negotiations for the adaptation, despite having no authority to do so. However, this action was subsequently ratified by the RESPONDENT CEO. These actions of the RESPONDENT amount to a modification of the contract. Thus, the original contractual price of $10,000,000 stood modified to include the rise in tariffs.

108. The buyer is obligated to pay the price of the goods as required by the contract [*CISG, Art. 53*]. Since, the contract was modified to include the additional price, the RESPONDENT ought to make payment of the outstanding contractual due [*Case No. 10422 (ICC)*].

109. In light of the above submissions, the amount of US$ 1,250,000 is due in light of modification of contract.

E. Alternatively, the Tribunal may adapt the contract in good faith

110. The obligation of good faith is a part of the parties' contractual obligations, rather than a principle for interpretation of the CISG [*Kastely, pp. 619 – 620*]. Parties are always expected to act in good faith in international transactions covered by the CISG [*Koskinen, para. 2.3.2*]. Good faith and Fair dealing are both general principles on which the CISG is based [*UNCITRAL Digest on Art. 7, 2008*]. The gap in the CISG with regards to hardship rules can be filled by resorting to the general principles of good faith and fair dealing. This requires that the parties try to adapt the contract in light of unforeseeable events [*Schlectriem – CISG Workshop, p. 236*].

111. The resort to a "carefully drafted" or "intelligent" statement, so as to put a party under impression that their needs would be met, while actually intending the contrary, amounts to negotiating or dealing in bad faith, thereby making the party liable for losses caused to the other party [*UNIDROIT Principles, Art. 2.1.15*]. In the present matter, the CLAIMANT was put under the impression that the parties would renegotiate and adapt the contract since the RESPONDENT had agreed to the same [*Ex. R4, p. 36*]. The CLAIMANT was merely trying to reach a break-even point and was not looking to make any profit. However, the RESPONDENT unilaterally ended negotiations on being confronted about the violation of resale agreement [*Ex. No. C8, p. 18*]. Moreover, the RESPONDENT agent had admitted to using a carefully drafted statement to induce the CLAIMANT to make delivery of goods [*Ex. No. R4, p. 36*].

112. In light of the above submissions, the Tribunal may adapt the contract in good faith, thereby resulting in the CLAIMANT being entitled to a payment of US$ 1,250,000.

CONCLUSION TO ISSUE III

113. Clause 12 of the FSSA allows for adaptation in situations of increased tariffs by attributing a wide interpretation to it. This is evidenced by the inclusion of the impugned increase in tariffs within "comparable unforeseen events", its unforeseeability and the change in circumstances. Even if the situation is held not to be governed under Clause 12, it may be done so under CISG. CISG allows for adaptation of price under Article 79, which governs situations of hardship. The claim is also recoverable, in light of modification of contract. Furthermore, the contract may be adapted in accordance with principles of good faith. Hence, the claim for US$ 1,250,000 is recoverable as an outstanding contractual due.

PRAYER FOR RELEIF

In response to the Tribunal's Procedural Orders, Counsel makes the above submissions on behalf of RESPONDENT For the reasons stated in this Memorandum, Counsel respectfully requests the Arbitral Tribunal to find that:

1. The tribunal has the jurisdiction and the powers under the arbitration agreement to adapt the contract.

2. The CLAIMANT should be entitled to submit evidence from the other arbitration proceedings regardless 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.

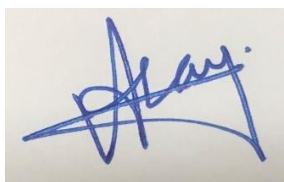
3. The CLAIMANT is entitled to the payment of US$ 1,250,000 or any other amount resulting from an adaptation of the price under clause 12 of the contract or under the CISG.

Respectfully signed and submitted by Counsel on 6 December, 2018.

CERTIFICATE

We hereby confirm that this Memorandum was written only by the persons whose names are listed below and who signed this certificate. We also confirm that we did not receive any assistance during the writing process from any person that is not a member of this team.

Our university is competing in both the Vis East Moot and the Vis Vienna Moot. We are submitting a jointly prepared Memorandum for both.



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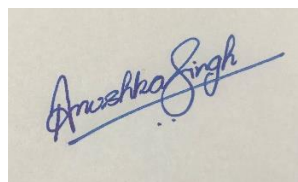

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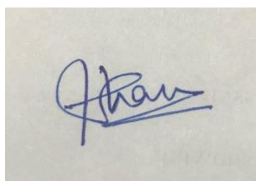

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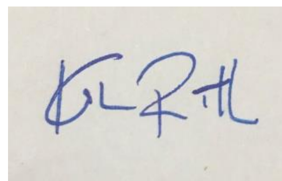

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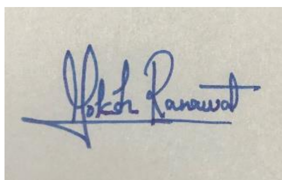

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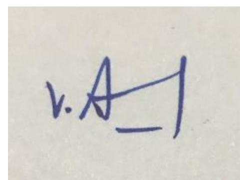

Velpula Audityaa

Certificate and Choice of Forum

To be attached to each Memorandum

I ISHANI CHOPRA, on behalf of the Team for (name of School) SYMBIOSIS LAW SCHOOL, PUNE hereby certify that the attached memorandum was prepared by the members of the student team, and that no person other than a student team member has participated in the writing of this Memorandum.

Check off the boxes as appropriate:

☐ Our School will be participating only in the Vis East Moot and is not competing in the Vienna Vis Moot.

☑ Our School is competing in both Vis East Moot and Vienna Vis Moot.

☐ We are submitting two separately prepared, different Memoranda to Vis East Moot and to Vienna Vis Moot.

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☑ Vis East Moot in Hong Kong, or

☐ Vienna Vis Moot

Authorised Representative of the Team for (School name) SYMBIOSIS LAW SCHOOL, PUNE

Name ISHANI CHOPRA

Signature