SIXTEENTH ANNUAL
WILLEM C. VIS (EAST) INTERNATIONAL COMMERCIAL ARBITRATION MOOT

MEMORANDUM FOR CLAIMANT

On Behalf Of:

Phar Lap Allevamento
Capital City, Mediterraneo

CLAIMANT

Against:

Black Beauty
Oceanside, Equestrian

RESPONDENT

Law and Political Science
Balkh University

Shahrbano Khaliqi • Ismail Noorzad
Muzhgan Mirmast • Ramin Mansoory

Balkh • Afghanistan

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INDEX OF ABBREVIATION

&	And
Apr	April
Arb	Arbitration
Art.	Article
Aug	August
C	CLAIMANT
Chap	Chapter
CISG	United Nation convention on contracts for international sale of Goods
Ex. C	CLAIMANT Exhibit
Ex. R	RESPONDENT Exhibit
Feb	February
FSSA	FROZEN SEMEN SALES AGREEMENT
Hf. Letter	Letter of Horace Fasttrack
Jan	January
Lex-Arbitri	The law of the Seat of Arbitration
Ltd	Limited
Mar	March
No.	Number
Not. Of Arb	Notice of Arbitration
Nov	November
Oct	October

¶	Paragraph
¶¶	Paragraphs
Pg. /Pp.	Page/Pages
PO	Procedural Order
PO1	Procedural Order No. 1
PO2	Procedural Order No. 2
Res. Not. Of Arb	Response to Notice of Arbitration
Sep	September
The problem	The Case in Hand
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNIDRIOT Principles	International Institute for the Unification of Private Law
V.	Versus

INDEX OF AUTHORITIES

INDEX OF CONVENTIONS, LAWS, AND RULES	CITED AS	CITED IN
United Nations Convention on Contracts for international Sales of Goods, Vienna, 11 April 1980	**CISG**	4,5,6,7,14,15,22,70,85,87,89,90 92,94,95,97,99,100,108,113
Uncitral Digest of Case Law on The United Nations Convention on Contracts for International Sale of Goods, Vienna, 2016	**DIGEST**	85,90,92,108
United Nations Convention on the Recognition and Enforcement of Foreign Awards, New York, 1958	**New York Convention**	63
UNCITRAL Model Law on International Commercial Arbitration 1985 with amendments as adopted in 2006, Vienna, 2008	**UNCITRAL Model Law**	39,41
2018 Hong Kong International Arbitration Center Rules	**2018 HKIAC Rules**	12,18,41,22,39
UNIDROIT principles of International Commercial Contracts, Rome, 2016	**UNIDROIT**	99,100,102,105,113

The Principles Of European Contract Law 2002, European Union	**PECL**	97
Principles of International Commercial Contracts, 1994 UNIDROIT	**UPICC**	97

INDEX OF BOOKS AND COMMENTARIES	CITED AS	CITED IN
The Adaptation of Long-Term Gas Sales Agreements by Arbitrators Contract's Without an Adaption Clause', The Adaptation of Long-Term Gas Sale Agreements by Arbitrators, International Arbitration Law Library, Volume 41(Kluwer Law International; Kluwer Law International 2017) pp.71-166 **By: Pietro Ferrario**	Gas Sale Agreements	41
Interpretation of International Arbitration Agreements, KLUWER; **By: Francisco Gonzalez**	Arb. Agreement	28
T. Rüede & R. Hadenfeldt, Schweizerisches Schiedsgerichtsrecht 74 (2d ed. 1993) **By: T. Rüede & R. Hadenfeldt**	T. Rüede & R. Hadenfeldt	17
CISG Advisory Council O Parol Evidence Rule, Plain Meaning Rule pinion No. 3 Contractual Merger Clause and the CISG, 2004 **By: prof. Albert kritzer**	CISG Advisory Council Opinion No. 3,	20
Stefan Kröll, Loukas Mistelis, Perales Viscasillas, UN Convention on Contracts for the International Sale of Goods (CISG), [commentary], C.H. Beck, 2011 **By: Stefan Kröll, Loukas Mistelis, Perales Viscasillas**	Kröll et al	5,6
Nigel Blackaby, Constantine Partasides QC with Alan Redfern, Martin Hunter, Redfern and Hunter on International Arbitration,	Blackaby et al	20

6th edition, Oxford University Press, 2015 **By. Nigel Blackaby**		
Peter Schlechtriem, Ulrich Schroeter, Internationales UN-Kaufrecht. Ein Studien- und Erläuterungsbuch zum Übereinkommen der Vereinten Nationen über Verträge über den internationalen Warenkauf (CISG), 6th edition, Mohr Siebeck, 2016 **By. Peter Schlechtriem, Ulrich Schroeter**	Peter Schlechtriem Ulrich Schroeter	6,15
Peter Schlechtriem, Ingeborg Schwenzer, Commentary on the UN Convention on the International Sale of Goods (CISG), 4th edition, Oxford University Press, 2016 **By. Peter Schlechtriem, Ingeborg Schwenzer**	Peter Schlechtriem Ingeborg Schwenzer	25,33
Franco Ferrari, Harry Flechtner, Ronald A. Brand, The Draft Uncitral Digest, and Beyond: Cases, Analysis and Unresolved Issues in the U.N Sales Convention, European Law Publishers, 2004, **By: Franco Ferrari, Harry Flechtner, Ronald A. Brand**	Ferrari et al.	32, 33
Heinrich Honsell, Kommentar zum UN-Kaufrecht, 2nd edition, Springer Verlag, 2016, **By. Heinrich Honsell**	Heinrich Honsell	32
The power of tribunals to determine their own jurisdiction is widely accepted. See, eg, G Born, International Commercial Arbitration	G Born, International Commercial Arbitration (2009)	41

(2009) **By: Gary B. Born**		
N Blackaby and C Partasides with A Redfern and M Hunter with, Redfern and Hunter on International Arbitration, (5th ed. 2009) **By: Redfern and M Hunter**	Partasides et al	41
Tallon, in Bianca-Bonell Commentary on the International Sales Law, Giuffrè: Milan (1987) 572-595. Reproduced with permission of Dott. A Giuffrè Editore, S.p.A **By: Tallon, Bianca-Bonell**	Talon	56, 94
CISG-AC Opinion No. 7, Exemption of Liability for Damages under Article 79 of the CISG, Rapporteur: Professor Alejandro M. Garro, Columbia University School of Law, New York, N.Y., USA. Adopted by theCISG-AC at its 11th meeting in Wuhan, People's Republic of China, on 12 October 2007 **By: Alejandro M. Garro**	CISG- AC Opinion No7	91
Force Majeure and Hardship under General Contract Principles: Exemption for Non-Performance in International Arbitration: Individual Requirements of the force Majeure Excuse under General Contract Principles, VI. Unforeseeable, Unavoidable and Unsurmountable impediments, **By: Christoph Brunner**	Force Majeure	92

Anja Carlsen Can the Hardship Provisions in the UNIDROIT Principles Be Applied When the CISG is the Governing Law? Pace Essay Submission, (June 1998). **By: Anja Carlsen**	Carlsen	95
PCA administered, 1976 UNCITRAL Rules, Austria-Czech/Slovak BIT), **By: Ruth Mackenzie**	Austria-Czech/Slovak BIT	41
Book Caron, Caplan - UNCITRAL Arbitration Rules - A Commentary 2d (2013) **By: Caron, Caplan**	Caron, Caplan	41
Memorandum on Arbitral Procedure Prepared by the Secretariat, U.N. Doc A/CN.4/35, II Y.B. I.L.C. 157, 165 (1950) **By: Secretariat, U.N.**	U.N.Doc. A/CN.4/35,	
Concurring and Dissenting Opinions of Howard M Holtzmann with respect to Interlocutory Awards on Jurisdiction in Nine Cases containing various Forum Selection Clauses, (November 5, 1982) at 20, n 26, reprinted in 1 Iran-US CTR 284, 294 (1981–82) **By: Howard M Holtzmann**	Concurring and Dissenting Opinions of Howard M Holtzmann	43
MCKENDRICK, E.: Contract Law. McMillan Law Masters, London, 1997. pp. 255-256., pp. 266-271., pp. 282-284.; **By: McMillan Masters**	MCKENDRICK, E	73

Kadner-Graziano - BÓKA: Összehasonlító szerződési jog (Comparative contract law)] Comp Lex, Budapest, 2010. pp. 438-439 **By: Kadner-Graziano**	KADNER-GRAZIANO	73
Alain Pietrancosta Professeur à l'Université Paris 1 Panthéon-Sorbonne Introduction of the hardship doctrine ("théorie de l'imprévision") into French contract law, A mere revolution on the books **By: Alain Pietrancosta**	Alain Pietrancosta	74
Hoge Raad, Netherlands, 7 November 1997, Unilex [URIBE 2011, pp. 14-15. and 253 **By: Hoge Raad**	Hoge Raad	49,91,92
The Adaptation of Long-Term Gas Sale Agreements by Arbitrators Contracts Without an Adaptation Clause', in Pietro Ferrario, The Adaptation of Long-Term Gas Sale Agreements by Arbitrators, International Arbitration Law Library, Volume 41 (© Kluwer Law International; Kluwer Law International 2017) pp.71 – 166 **By: Pietro Ferrario**	Gas The Adaptation of Long-Term Gas Sale Agreements	76
Frederick R. Fucci Hardship and Changed Circumstances as Grounds for Adjustment or Non-Performance of Contracts, para 3, page 1 **By: Frederick R. Fucci**	Frederick R	80
Norton roes Fulbright, international arbitration report, Issue 7 – september 2016; Neil Q Miller and Holly Stebbing, Contractual protections available to international	Norton roes Fulbright	81, 82

investors, page21 **By: Neil Q Miller and Holly Stebbing,**		
Commentary on UNIDOIT Principles **By: Michael J. Bonell**	Commentary on UNIDROIT	96,98
ICC Force Majeure Clause 2003/ICC Hardship Clause 2003, available at: https://iccwbo.org/publication/icc-force-majeure-clause-2003icc-hardship-clause-2003/	ICC Hardship Clause 2003	98
Arbitration to adapt long-term international economic contracts to changed circumstances, Zhivko Stalev; Sanders, P., La technique de l'arbitrage comme procédéde révision des contrats (La situation des Pays-Bas), Netherlands Reports to the Tenth International Congress of Comparative Law, Kluwer-Deventer, 1978 **By: Zhivko Stalev Sanders, P., La**	Zhivko Stalev	79
ICC rules for the use of domestic and international trade terms, incoterm 2000, January 2011, B5, page 4 **By: International Chamber of Commerce**	incoterm 2000	79, 83

LIST of CASE	CITED AS	CITED IN
Kammergericht Berlin 28 Sch 17/99, 15 October 1999 CLOUT Case 373, Berlin 28 Sch 17/99	Kammergericht	14
Preliminary Award in Case No. 2321 of 1974 I Y.B. Comm. Arb., P. Sanders (ed.) 133 (1976)	Case No. 2321 of 1974 I Y.B.	14
Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 61 n.7 (U.S. S.Ct. 1995)	Mastrobuono v. Shearson	14
Louis Dreyfus Negoco SA v. Blystad Shipping & Trading	SA v. Shipping	17
Sweet Dreams Unlimited, Inc. v. Dial-A-Mattress, Int'l, Ltd	Sweet Dreams	17
Shah v. Santander Consumer USA, Inc., 2011 WL 5570791, at *4-6 (D. Conn.)	Shah v. Santander	17
Kuklachev v. Gelfman, 600 F.Supp.2d 437, 460 (E.D.N.Y. 2009)	Kuklachev v. Gelfman	17

Handelsgericht Aargau Case No HOR.2005.82/ds CISG-Online 1740 5 February 2008 Switzerland	Case No. HOR. 2005.82/ds	25
Audiencia Provincial de Cáceres Case No. 00296/2010 CISG-Online 2131 14 July 2010 Spain	Case No. 00296/2010	25
United States District Court for the District of Kansas Case No. 03-4165-JAR CISG-Online 1602 28 September 2007 United States of America	Case No. 03-4165-JAR	25
Bezirksgericht St. Gallen Case No. 3PZ97/18 CISG-Online 336 3 July 1997 Switzerland	Case No. 3PZ97/18	33
Court of Appeal Case No. 2000 NZCA 350 CISG-Online 1080 27 November 2000 New Zealand	Case No. 2000 NZCA 350	33
Kuklachev v. Gelfman, 600 F.Supp.2d 437, 460 (E.D.N.Y. 2009)	Kuklachev v. Gelfman	17
Shah v. Santander Consumer USA, Inc., 2011 WL 5570791, at *4-6 (D. Conn.)	Shah v. Santander Consumer	17
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Mastrobuono v. Shearson Lehman Hutton Inc., 514 U.S. 52, 61 n.7 (U.S. S.Ct. 1995)	Mastrobuono v. Shearson	16
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INDEX of AWARDS	CITED AS	CITED IN
Award in ICAC Case No. 252/2010 of 31 August 2011, 2(4) Int'l Comm. AR. Vestnik (2011)	Award in ICAC Case No. 252/2010	15
Preliminary Arbitral Award in Case No. 9759 of 1999 In: Bonell, M.J., The UNIDROIT Principles in Practice: Caselaw and Bibliography on the Principles of Commercial Contracts, Transnational Publishers, Ardsley, NY 2002,	Case No. 9759	15
Judgment of 24 September 1985, 1986 NJW 2202, 2203 (Oberlandesgericht Frankfurt)	Oberlandesgericht Frankfurt	17
Judgment of 7 July 1962, DFT 88 I 100 (Swiss Federal Tribunal)	DFT 88 I 100	17
ICC International Court of Arbitration Award No. 91877 CISG-Online 705 1 June 1999	Award No. 91877	33
[ICC Cases No1512 and 7365, award in ICC Case No. 4761 of 1987, J.D.I. (1987): 1012-18, Collection of ICC Awards II, 302	Cases No1512 and 7365	

Statement of Facts

Phar Lap Allevamento (hereinafter "**CLAIMANT"**) is a company registered and located in the Capital City, Mediterraneo. It operates Mediterraneo's oldest and most renowned stud farm covering all areas of the equestrian sport. Black Beauty Equestrian (hereinafter "**RESPONDENT"**) in Oceanside, Equatoriana is famous for its broodmare lines that have resulted in several world champion show jumpers and international dressage champions.

During 2014 RESPONDENT decided to establish a racehorse stable and acquired 10 mares with an excellent racehorse pedigree.

In 2016 RESPONDENT and CLAIMANT (the **"parties")** met for the first time at Equestrian World.

During 2017 Equatoriana's government had imposed serious restrictions on transportation of all living animals due to severe problems with foot and mouth disease. As a result thereof, the ban on artificial insemination for racehorses has been temporarily lifted in Equatoriana. Following that, RESPONDENT contacted CLAIMANT, inquiring about the availability of Nijinsky III frozen semen for its newly started breeding program and asked CLAIMANT to provide it with an offer of 100 doses including CLAIMANT terms and conditions.

On 24th March 2017 CLAIMANT offered RESPONDENT 100 doses of Nijinsky III's frozen semen for 99.500 USD in accordance with the Mediterranean Guidelines for Semen Production and Quality. RESPONDENT accepted most terms and conditions of CLAIMANT but was asking for a DDP delivery from CLAIMANT since CLAIMANT has reliable experience in the transportation and delivery of semen doses. RESPONDENT further added to accept the applicability of Mediterraneo's law if the courts of Equatoriana have jurisdiction.

On 31st March 2017 CLAIMANT accepted the DDP delivery on condition to charge additional costs, (1000 USD) per dose and with the exception not to take any further risks associated with this delivery contract. In order to meet those requirements, the parties have added a hardship clause into their Frozen Semen Sales Agreement (hereinafter "FSSA") explicitly exempting CLAIMANT from liability in case of hardship or other unforeseeable circumstances. CLAIMANT didn't accept the jurisdiction of the courts in Equatoriana instead suggested to go for arbitration and that arbitration seat might be in Mediterraneo.

On 10th Apr 2017 RESPONDENT agreed on the Law of Mediterraneo to govern the FSSA. RESPONDENT prepared the first draft for the dispute resolution clause which is based on the model clause of HKIAC and stated that the seat of arbitration shall be in Equatoriana.

On 11th Apr 2017, the agreement on the Law of Mediterraneo remained. CLAIMANT suggested a neutral country as the seat of arbitration, which is Danubia.

On 12th Apr 2017, the two negotiators got injured after the Colt Auction, which jeopardized the finalization of the FSSA.

On 6th May 2017, CLAIMANT and RESPONDENT signed the contract.

During December 2017 Mediterraneo's newly elected president announced the imposition of 25% tariffs on agricultural products from Equatoriana. Retaliating to this, Equatoriana's government which actually supported free trade, imposed 30% tariffs on agricultural products coming from Mediterraneo.

In Jan 2018 CLAIMANT was just informed by the customs authorities about the newly imposed tariffs of 30% on agriculture products. Accordingly, CLAIMANT and RESPONDENT were negotiating about a price adjustment for the frozen semen, which was supposed to be shipped on 22nd January 2017. During the negotiations, RESPONDENT created the impression of accepting the general need for a price adaption. In confidence of that, CLAIMANT complied with its obligation to deliver the third and last installment of 50 doses of Nijinsky's III.

In February 2018 CLAIMANT confronted RESPONDENT with their discovery of RESPONDENT having breached the resale prohibition clause. Thereupon, RESPONDENT's CEO stopped the negotiations and refused to pay any additional amounts resulting from the tariffs.

In June 2018 CLAIMANT's lawyer Ms. Julie Napravnik issued a witness statement. In the witness statement, Ms. Napravnik recalls that it should be "the task of the arbitrators to adapt the contract if the parties could not agree".

On 31 July 2018 CLAIMANT submitted its Notice of Arbitration after futile attempts to settle the issue amicably and appointed Ms. Davis as its arbitrator.

On 24th Aug 2018 RESPONDENT filed its response to the Notice of Arbitration and appointed Dr. Dettorie as its arbitrator.

On 2nd Oct 2018 CLAIMANT sent an e-mail to the members of the arbitral tribunal informing them that it received reliable information about a previous arbitration under the HKIAC rules in which RESPONDENT asked for an adaption of the contract where it was in its favor. CLAIMANT obtained the information from a former employee of RESPONDENT's opposing party in said arbitration.

Summary of Arguments

ISSUE I: Having agreed on a choice of law clause, the parties intended to have the law of Mediterraneo governing the arbitration agreement. Fruthermore, the arbitral tribunal has the jurisdiction to adapt the contract under the arbitration agreement.

ISSUE II: CLAIMANT is entitled to submit evidence of RESPONDENT's involvement in another arbitral proceeding which was initiated by RESPONDET for the purposes of adapting a contract. The arbitral tribunal has the authority to determine the admissibility of evidence, as well it is a legal right of CLAIMANT to submit evidence to prove the relied facts.

Issue III. CLAIAMNT is entitled to the payment of 1.250.000 USD resulting from an adaption of the price under article 12 FSSA; as well as under Articles 8 and 79 CISG. Besides that, the FSSA and price should be adopted under principles 6.2.2 and 6.2.3.of UNIDROIT

ISSUE ONE

I. The Arbitral Tribunal has the jurisdiction to adapt the contract under the arbitration agreement and Mediterranean law governs the arbitration agreement and its interpretation

A. The Tribunal has the power to adapt and interpret the AA

1. The Arbitration Clause and its interpretation are governed by the law of Mediterraneo and not, as RESPONDENT allege, by the law of Danubia [The problem, pg. 7, ¶ 15].
2. The governing law of the arbitration agreement is normally the same as the law governing the contract of which it forms a part [*Deutsche Schachtbau v. Shell International Petroleum*]
3. After long discussions, the Parties have submitted the contract to the law of Mediterraneo which consequently also governs the interpretation of the Arbitration Agreement contained therein. [Not. of Arb. pg. 7, ¶15]

i. According to art. 8 (1) CISG, the parties intended to have Mediterranean law governing their Arbitration Agreement

4. Art. 8 CISG provides a comprehensive mechanism for the interpretation of all contractual terms, including Arbitration Clauses [CISG Advisory, pp231].
5. To that end, one should first assess the subjective intent of the parties under Art. 8(1) CISG [Kröll et al. 8 § 3; Schlechtriem/Schwenzer, Art. 8 § 11]. Afterward, should the parties' intent not to be clearly determinable, the parties' statements and conduct should be interpreted following an objective test as per Art. 8(2) CISG [Ibid.].
6. Since the CISG emphasizes the private autonomy of the parties, the content of the contract is first determined by their common intent [*Kröll et al. Art. 8 § 2; Peter Schlechtriem, Ulrich Schroeter § 221a; Peter Schlechtriem, Ingeborg Schwenzer, Art. 8 § 11; Case No. HOR.2005.82/ds; Case No. 00296/2010; Case No. 03-4165-JAR*].
7. Furthermore, in accordance with Art. 8 (3) CISG in determining the intent of the parties, "due consideration is to be given to all relevant circumstances of the case including the negotiations usages and any subsequent conduct of the parties".] [Art. 8(3) CISG]
8. CLAIMANT, by considering the RESPONDENT's concern about being submitted to the jurisdiction of the courts of Mediterraneo, has announced its willingness to opt for Arbitration in Mediterraneo instead. As, however, this was not accepted either, the parties finally agreed on Danubia as a neutral seat of Arbitration. Yet, emphasis should be put on the fact that the

parties did not make any modification as to the applicability of Mediterranean law as their governing law [Ex. C 4, Pg. 12, ¶ 5].

9. While RESPONDENT claims that it still wanted to incorporate changes as to the governing law, thereby relying on Mr. Antley's note from the12th April which states "Clarify in Arbitration Clause that neutral venue and applicable law", it neglects the fact that the parties have already reached an agreement and simply wanted to express that in writing.

10. The note RESPONDENT relies on rather refers to CLAIMANT's email from 11th April 2017 declaring that "to avoid any further futile discussion on the issue [CLAIMANT] would like to inform [RESPONDENT] that Phar Lap has an internal policy according to which consent to a contract submitted to a foreign law or providing for dispute resolution in the country of the counterparty requires special approval by the creditors' committee, a board in which all financing banks are included.

11. It would, however, be possible to agree on arbitration in a neutral country. Having chosen Danubia as the seat of arbitration, the parties served the requirement of agreeing on a neutral venue. Being aware of CLAIMANT's internal policy, RESPONDENT's negotiator also knew that at no point in time would it have been possible to submit the arbitration agreement to anything other than the Mediterranean law.

12. Accordingly, RESPONDENT did not object to its application but implicitly agreed. RESPONDENT knew that had it not done so, the contract conclusion would have had to be postponed or even canceled because of the special approval CLAIMANT's creditors' committee would not have been likely to give.

13. Thus, for the sake of contract conclusion, the parties mutually intended to apply the law of Mediterraneo not only to the FSSA but also to the interpretation of the Arbitration Agreement.

ii. Even an objective interpretation of the Arbitration Agreement shows the parties' intention to apply the law of Mediterraneo

14. Should the Arbitral Tribunal find that the parties' intent was not sufficiently determined through the interpretation under Art. 8 (1), it should apply the objective interpretation of Art. 8(2) CISG [*Ferrari et al. p. 176; Heinrich Honsell Art. 8 § 9*].

15. Pursuant to Art. 8(2) CISG, the understanding of a person with the same knowledge and background in the same circumstances as the addressee is relevant to determine the intent of

the parties [*Ferrari et al. p. 180; Peter Schlechtriem, Ingeborg Schwenzer, Art. 8 § 11; Award No. 91877; Case No. 3PZ97/18; Case No. 2000 NZCA 350*].

16. In the present case, the parties intended to apply the law of Mediterraneo not only to their FSSA but also to the Arbitration Agreement contained therein. When the parties had negotiations about the contract, Mr. Antley, RESPONDENT's council clearly stated that in his view it should be the arbitrators' task to adapt the contract if the parties could not reach an agreement [The problem pg. 17].
17. When the parties were negotiating the contract they had in mind that in case of changed circumstances they should have an adaption clause. In the past, CLAIMANT has experienced that such cases, in particular, unforeseeable additional health and safety requirements can result in highly expensive tests which can cost up to 40 %. Avoiding this, CLAIMANT was not willing to take over any risk but rather added a hardship clause in the contract [Ex. C4, pg. 12, ¶ 4].
18. Additionally, Two months before the last shipment of 50 doses was due to Mediterraneo's newly elected President, Ian Bouckaert, announced 25 percent tariffs on agricultural products from Equatoriana [*The problem, pg. 6, ¶ 9*]. There have been few countries in the past which had tried to protect their farmers by tariffs on foreign agricultural products of a comparable size, but Mediterraneo was not one of them [*PO2, pg. 4, ¶ 23*].
19. CLAIMANT and RESPONDENT were astonished to hear that frozen semen was listed in the schedule released by the Ministry of Agriculture of the products that fell under the new tariffs-regime and that this also applied to racehorse semen [*The problem, pg. 6 ¶ 11*].
20. Moreover, CLAIMANT was not willing to take over any further risks associated with such a change in the delivery terms, in particular not those associated with changes in customs regulations or import restrictions [*Ex. C4, pg. 12, ¶ 4*].
21. Thus, the understanding of a reasonable third person would lead to the conclusion that the parties intended to apply Mediterranean law to their Arbitration Agreement.
22. In conclusion, Art. 8 CISG, through its two-prong test of subjective and objective interpretation, confirms the Parties' intent to apply the Mediterranean Law.

B. The Parties intended to impose a broad interpretation of their agreement based on the Arbitration law of Mediterraneo

23. An arbitral institution's model clause usually incorporates essential elements of an arbitration agreement and is adaptable to a broad range of contractual relationships [*A Guide to The HKIAC Arbitration Rules, Michael Moser & Chiann Bao 2017, pg. 45*]. HKIAC has drafted four model arbitration clauses, which parties may use either in their original form or with certain modifications based on the parties' preferences [*A Guide to The HKIAC Arbitration Rules, Michael Moser & Chiann Bao 2017, Pg. 49*].
24. All those four clauses contain provisions on which law should govern the arbitration agreement [*A Guide to The HKIAC Arbitration Rules, Michael Moser & Chiann Bao 2017, Pg. 49*]. In the present case, the parties intentionally left out the part where the choice of law for the arbitration clause could have been determined, i.e. "the law of this arbitration clause shall be…" Judging from the importance of this clause, the parties did not simply forget about the inclusion of the provision but implied that they already have a choice of law clause for the FSSA which in the same way also applies to the arbitration agreement,
25. The Arbitration clause as agreed between parties mentions that "Any dispute arising out of this contract, including the existence, validity, interpretation, performance, breach or termination thereof shall be referred to and finally resolved by arbitration…". [*Ex. C 5, Pg. 14, ¶ 15*].
26. First, the broad interpretation principle requires that the Tribunal refrains from using a strict or literal approach and rather adopt a contextual approach that seeks to meet the parties' real intentions [*Kammergericht Berlin 28 Sch 17/99; Case No. 2321 of 1974 I Y.B.; Case No. 9759 p. 617*].
27. Various authorities have interpreted the "all disputes" or "any disputes" formulae broadly, usually concluding that they extend to all disputes having any plausible factual or legal relation to the parties' agreement or dealings [*Award in ICAC Case No. 252/2010*].
28. The use of the words "all" or "any" may also argue in favor of a tribunal's competence-competence over issues of interpretation [Arb. Agreement], and in favor of broad remedial authority [*Mastrobuono v. Shearson*].
29. The term of "arising out of" is considered to be a broad formulation [*SA v. Shipping; Sweet Dreams; Shah v. Santander; Kuklachev v. Gelfman*] and is interpreted broadly by German [*Oberlandesgericht Frankfurt*] and Swiss [*DFT 88 I 100; T. Rüede & R. Hadenfeldt*] Courts.
30. In our case, like in most other jurisdictions the Arbitration Law of Mediterraneo provides for a broad interpretation of Arbitration agreements, irrespective of an allegedly narrow wording

merely referring to "dispute(s) arising out of this contract". Thus, the Arbitration Agreement clearly extends to a claim for an increased remuneration [The problem pg. 7].

31. Accordingly, relying on the wording of the Arbitration Clause of the present case the parties intended to impose a broad interpretation on their agreement which is consistent with the Arbitration Law of Mediterraneo that provides for an interpretation of Arbitration Agreements in the same manner, hence for a broad interpretation.

C. Pursuant to the Hague Principles on Choice of Law in International Commercial Contracts, the FSSA should be interpreted on the basis of Mediterranean Law

32. Based on Art. 9 of The Hague principles "The law chosen by the parties shall govern all aspects of the contract between the parties, including but not limited to 'interpretation'" [*The Hague Principles on Choice of Law in International Commercial Contracts, art. 6 (1)(a)*]
33. Further, Article 9 is based on the principle that, unless the parties agree otherwise, the law chosen shall govern *all aspects of the contract* [*Principles on Choice of Law in International Commercial Contracts, pg. 65*].
34. At hand, the general conflict of laws rules for contracts in Mediterraneo is a verbatim adoption of the Hague Principles on Choice of Law in International Commercial Contracts [*PO2 para. 43*].
35. If there is an express choice of law to govern the contract as a whole, the arbitration agreement will also be governed by that law: this is so whether or not the seat of the arbitration is stipulated, and irrespective of the place of the seat [*International Tank & Pipe S.A.K v. Kuwait Aviation Fuelling Co. K.S.G.* [1975] Q.B. 224 (C.A.); *Qatar Petroleu, v. Shell International Petroleum* [1983] 2 Lloyd's Rep. 35 (C.A.); T*he Marques de Bolarque* [1984] 1 Lloyd's Rep. 116; *Paul Smith Ltd. v. H & S International Holdings Inc.* [1991] 2 Lloyd's Rep. 127, 130; *Union of India v. McDonnell Douglas Corporation* [1993] 2 Lloyd's Rep. 48; *Sumitomo Heavy Industries Ltd v. Oil and Natural Gas Commission* [1994] 1 Lloyd's Rep. 45.].
36. Further, the law governing the arbitration agreement will determine its validity, effect, and interpretation. The question whether the arbitration clause is wide enough to cover the dispute between the parties is a question of interpretation and therefore depends on the law governing the arbitration agreement [*Nova (Jersey) Knit Ltd. v. Kammgarn Spinnerei* [1977] 1 W.L.R. 713 (H.L.); *Dalmia Dairy Industries Ltd. v. National Bank of Pakistan* [1978] 1 Lloyd's Rep. 223 (C.A.); *The Marques de Bolarque* [1984] 1 Lloyd's Rep. 652, 660.].

37. Julian Krone head of the legal department of RESPONDENT has stated that "The draft of the contract had already a provision, choice of law clause in favor of the law of Mediterraneo." [Ex. R3, pg. 35, ¶ 3].
38. Further, according to para. 14 of the sales agreement the "Sales Agreement shall be governed by the law of Mediterraneo" [The problem pg. 14]. Moreover, with an email of 24 March 2017 CLAIMANT offered RESPONDENT 100 doses of Nijinsky III's frozen semen in accordance with the Mediterraneo Guidelines for Semen Production and Quality Standards (Ex. C2, pg. 10, ¶.1). RESPONDENT had no problems with most of the terms of the offer [The problem pg. 5]. This itself show that RESPONDENT was implicitly agree that Mediterraneo Law should govern the arbitration agreement. Therefore, FFSA should be interpreted on the basis of Mediterraneo law.

D. In any event, the competence-competence principle gives the tribunal its jurisdiction

39. Art. 16 of the UNCITRAL Model Law provides "The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the Arbitration Agreement" [*Art 16 model law*].
40. The competence-competence doctrine is almost universally accepted in International Arbitration. Conventions, national legislation, judicial decisions, institutional rules and international arbitral awards [*Arb. Comp. U.N. Doc. A/CN.4/35, II Y.B. I.L.C. 157, 165*].
41. Whereas the Arbitration Laws of Mediterraneo is a largely verbatim adoption of the UNCITRAL Model Law [PO2, pg. 12, ¶ 14] and Danubia has adopted the UNCITRAL Model Law on International Commercial Arbitration [The problem pg. 52], UNCITRAL Model Law states that the tribunal can rule on its own jurisdiction [art. 16 UNCITRAL]. Moreover, parties have agreed when there is a dispute arising out of the contract it shall be referred to arbitral tribunal [*The problem, pg. 6*]. Therefore, the tribunal has the power to rule on its own jurisdiction.
42. ISSUE ONE CONCLUSION: In conclusion, based on mentioned authorities and facts of the case, parties have intention on the choice of law clause, due to the intention of the parties the law of Mediterraneo governs the arbitration agreement and the arbitration agreement give the tribunal the jurisdiction to interpret the contract broadly and adapt the contract.

ISSUE 2: CLAIMANTS ENTITLED TO SUBMIT EVIDENCE OF RESPONDENT'S INVOLVEMENT IN OTHER ARBITRAL PROCEEDING.

43. RESPONDENT in its Answer to the Notice of Arbitration rejected existence of any "extraneous" evidence where it would be relevant to the case in hand, but CLAIMANT unintentionally at annual breeder conference got aware of RESPONDENT's involvement in another arbitration with the same position which CLAIMANT has in our case, in that Case, RESPONDENT is affected negatively by the tariffs imposed. Alongside with, and instead of arguing the breach of Confidentiality by CLAIMANT when CLAIMANT got access to that information, to that end CLAIMANT argues (A). Each party shall have the burden of proving the facts relied on. While the CLAIMANT has the burden of proving the facts relied on, Secondly CLAIMANT argues (B). The tribunal has the authority to determine the admissibility of evidence, thirdly (C). CLAIMANT is entitled to present evidence obtained by a breach of Confidentiality, fourthly (D). The tribunal can consolidate both arbitrations and at the end (E). Preventing claimant from presenting its evidence will risk enforcement of the award.

A. EACH PARTY SHALL HAVE THE BURDEN OF PROVING THE FACTS RELIED ON

44. Based on the Hong Kong International Arbitration Center Rules (HKIAC-Rules) 2018 Art 22.1 "Each party shall have the burden of proving the facts relied on to support its claim or defense." Consistent with the fundamental principle that each party bears the burden of establishing the constituent elements of the claims or defenses it asserts in the proceedings, arbitration rules usually require each party to provide the tribunal and the other party with the documents upon which it intends to rely on the arbitration *[(Emanuele, Molfa and Jedrey; Jan 2016), page 2; See, e.g., Article 3.1 of the IBA Rules of Evidence; Articles 20.4 and 21.2 of the UNCITRAL Rules*]. In civil law jurisdictions, the general rule is that each party will produce documents upon which it intends to rely [*J. El-Ahdab and A. Bouchenaki, Discovery in International Arbitration: See also U. Draetta and R. Luzzatto, The Chamber of Arbitration of Milan Rules: A Commentary, 2012, p. 406*]. By contrast, it is considered essential in common law jurisdictions to provide each party with an opportunity to obtain documents in the possession of other parties. For instance, each party provides notice of the witnesses and documents upon which it may rely [*Evidence in International*

Arbitration: (Emanuele, Molfa and Jedrey; Jan 2016), page 3; Fed. R. Civ. P. 26(a) (1) (initial disclosures)].

45. RESPONDENT's Answer to the Notice of Arbitration rejecting any "extraneous" evidence which latterly was disclosed by Mr. Kieron Velazquez the new CEO of one of CLAIMANT's regular customer about the effect of tarffis on RESPONDENT in our case, involve in a resale of Semen to another buyer [*PO2, ¶ 40, pg. 60*] which clearly show the breach of contractual obligations of RESPONDENT toward CLAIMANT**,** at the meantime shows that CLAIMANT was not involved in any kind of breach of confidentiality and any sort of illegal hack purposed by RESPONDENT**[** *letter of FASTRACK, pg. 51, ¶ 1*].
46. As it is upon parties to the arbitrations to have their burden of proves while being a party to an arbitration and should disclose them to the tribunal and the party or parties against them, CLAIMANT by disclosing when got aware of such violation and unprecedented action of RESPONDENT is using the proves to prove its claim.

B. THE TRIBUNAL HAS THE AUTHORITY TO DETERMINE THE ADMISSIBILITY OF ANY EVIDENCE.

47. RESPONDENT and CLAIMANT agreed upon HKIAC-Rules 2018 for the settlement of any dispute arising out of their contract, the HKIAC-Rules recognized the authority of determination of the admissibility, relevance, materiality, and weight of the evidence to the Arbitral Tribunal itself, the Arbitral Tribunal is to recognize and allow a rule to be brought before the Arbitral Tribunal. In respect to that authority the CLAIMANT firstly argues (i). The arbitral tribunal has the authority to determine the admissibility of evidence under HKIAC-Rules 2018. Secondly (ii). The arbitral tribunal has the authority to determine the admissibility of evidence under UNCITRAL Rules and thirdly (iii). The arbitral tribunal has the authority to determine the admissibility of evidence under IBA rules of taking evidence.

i. THE ARBITRAL TRIBUNAL HAS THE AUTHORITY TO DETERMINE THE ADMISSIBILITY OF EVIDENCE UNDER HKIAC-RULES 2018

48. The arbitral tribunal shall determine the admissibility, relevance, materiality, and weight of the evidence, including whether to apply strict rules of evidence [*HKIAC-Rules, article 22.2.a*]. Additionally, the decision on the admissibility of the taking of evidence was argued repeatedly in

arbitration which is solely at the discretion of the arbitral tribunal [*Platte in Riegler et al., Fasching, Schiedsgericht, Hans Fasching, Schiedsgericht und Schiedsverfahren im österreichischen und im internationalen Recht 13 (Manz, 1973); At section 599 mn 2*]. CLAIMANT recognizes this authority and is invoking it for the evidence which CLAIMANT asked to bring before the Arbitral Tribunal by latter of Langweiler on 2 October 2018 which are very much important to the decision of the Tribunal.

ii. THE ARBITRAL TRIBUNAL THE AUTHORITY TO DETERMINE THE ADMISSIBILITY OF EVIDENCE UNDER UNCITRAL RULES.

49. The UNCITRAL Rules in clear terms says about the evidence and the Tribunal authority where necessary and permitted by applicable arbitration law and arbitration rules, the arbitral tribunal may itself take appropriate steps to obtain evidence from a third party after consulting the parties. [*UNCITRAL Notes on Organizing the Arbitral proceedings, pg. 18*] At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits, or other evidence within such a period of time as the tribunal shall determine. [*UNCITRAL Rules Article 24.3, Article 28.3 and Article 40.1, the conduct of an international Arbitration, pg. 11*] Thus, as to most procedural matters arising in the course of the arbitration (e.g. admissible evidence; nature of witness examination), the arbitral tribunal retains the ultimate authority under the UNCITRAL Rules to prescribe the arbitral procedure. To the extent that the parties have not agreed otherwise, the arbitral tribunal is free in the application of the rules of evidence. [*Judgment of 29 June 2007, Case No. R06/005HR (Dutch Hoge Raad). See also Judgment of 28 February 2013, DFT 4A_576/2012, ¶4.2.2*]. The UNCITRAL Rules are representative, with Article 27(4) of the 2010 Rules providing that "[t]his arbitral tribunal shall determine the admissibility, relevance, materiality, and weight of the evidence offered." [*UNCITRAL Rules, Art. 27(4). See also D. Caron & L. Caplan, The UNCITRAL Arbitration Rules: A Commentary 572 (2d ed. 2013) (Article 27(4) "confers discretion on the tribunal with respect to all forms of evidence") (emphasis in original); T. Webster, Handbook of UNCITRAL Arbitration¶¶27-107 to 27-115 (2010)*].

iii. THE ARBITRAL TRIBUNAL HAS THE AUTHORITY TO DETERMINE THE ADMISSIBILITY OF EVIDENCE UNDER IBA RULES OF TAKING EVIDENCE.

50. The IBA Rules of Evidence recognize the arbitrators' power to order a party to produce documents that are adverse to that party's own case in the arbitration [Article 3.7 of the IBA Rules of

Evidence]. The IBA Rules on the Taking of Evidence provide that "[t]he Arbitral Tribunal shall determine the admissibility, relevance, materiality, and weight of evidence." [*2010 IBA Rules on the Taking of Evidence, Art. 9(1). See Strong & Dies, Witness Statements Under the IBA Rules of Evidence: What to Do About Hear-Say, 21 Arb*]. Again, even in the absence of such provisions, arbitral tribunals clearly have the implied authority to resolve issues of admissibility, weight, and relevance of the evidence. [*See, e.g., §25.04[B] [4]; Pietrowski, Evidence in International Arbitration, 22 Arb. Int'l 373, 374, 378-79 (2006); Strong & Dies, Witness Statements Under the IBA Rules of Evidence: What to Do About Hear-Say, 21 Arb. Int'l 301 (2005)*]. Similarly, the IBA Rules on the Taking of Evidence provide that "[t]he Arbitral Tribunal shall determine the admissibility, relevance, materiality, and weight of evidence." [*2010 IBA Rules on the Taking of Evidence, Art. 9(1). See Strong & Dies, Witness Statements Under the IBA Rules of Evidence: What to Do About Hear-Say, 21 Arb*].

51. CLAIMANT submit the above-mentioned rules to remind the authority of tribunal to the admissibility of evidence and its relevance to the case in hand, RESPONDENT would without doubt challenge the applicability of these rules by invoking that these rules were not agreed by both parties while the repeated application of these rules in tribunals, states, companies, and the Commercial law in whole shows the legal significance of these rules and emphasize on these rules as custom, if they are not even agreed by the parties to the arbitrations.
52. Meanwhile, CLAIMANT recognizes the power of the tribunal for recognition of admissibility and relevance of evidence and look forward to the tribunal to apply the rules mentioned above.

C. CLAIMANT is entitled to present evidence obtained by a breach of Confidentiality.

53. Mr. Langweiler by his letter to the arbitration in 2 October 2018 informed the tribunal about information which was obtained by Phar Lap's CEO at annual breeder conference unintentionally, which RESPONDENT is claiming to be taken by a breach of confidentiality or by hacking its computer system, since the CEO of CLAIMANT heard about that arbitration from Mr. Kieron Velazquez at annual breeder conference. To that end, there is no breach of confidentiality but if the tribunal recognizes a breach of confidentiality, CLAIMANT submits: (i) the breach of Confidentiality was done by the third party. And (ii) Tribunal should allow the CLAIMANT to present the relevant evidence obtained by its CEO.

i. THE BREACH OF CONFIDENTIALITY WAS DONE BY THIRD PARTY.

54. RESPONDENT was affected by the tariffs imposed by states when RESPONDENT resold the semen which RESPONDENT bought from CLAIMANT, although the consent requirement in the contract for any other use of Nijinsky III was protected by Phar Lap. When the CEO CLAIMANT participated in annual breeder conference The CEO of CLAIMANT heard about the involvement of RESPONDENT in other arbitration from one of its customer's CEO Mr. Kieron Velazquez he is one of the regular customers of CLAIMANT but until 30 may 2018 had been working for the Mediterranean buyer in the other arbitration emphasize added which Mr. Kieron Velazquez was working for Mediterranean buyer in the other arbitration which RESPONDENT was involve with another party, i.e. that, due to the tariffs imposed, RESPONDENT was only willing to deliver the mare once the price has been increased to reflect tariffs. CLAIMANT for filling its obligation frankly in preparation for the upcoming case management-Conference on October 4, informed the Arbitral Tribunal that it just received reliable information at the annual breeder conference about another arbitration which RESPONDENT has with one of its customers concerning the sale of a promising mare to Mediterraneo. That sale had been affected by the unforeseen tariffs of 25% imposed by the president of.

55. The facts and evidences clearly shows that CLAIMANT was not and is not involve in any terms of breach of confidentiality claimed by the RESPONDENT neither CLAIMANT hacked or even tried to hack the computer system of RESPONDENT as there is no fact about it to prove that CLAIMANT did, the evidence were obtained by its CEO from Mr. Kieron Velazquez by his own consent, to that end the confidentiality was done by a third party, not by the CLAIMANT.

ii. TRIBUNAL SHOULD ALLOW THE CLAIMANT TO PRESENT THE EVIDENCE OBTAINED BY ITS CEO.

56. Pursuant to Article 3.9 of the IBA Rules of Evidence, the arbitral tribunal is empowered to take "such steps as [it] considers appropriate" to "obtain the production of Documents from a person or organization who is not a Party to the arbitration and from whom the [requesting] Party cannot obtain the Documents on its own." Likewise, Article 3.10 of the IBA Rules of Evidence provides that the Tribunal may "request any Party to use its best efforts to take [Art.3.10, IBA Rules of Evidence] any step that it considers appropriate to obtain Documents from any person or organization." Thus, the possession, custody or control requirement set forth in the IBA Rules of Evidence would not prevent a tribunal from ordering a party to take available steps to secure the

production of documents in the possession of a third party. As a practical manner, most arbitrators will conclude that "[w]hen a party…has access to relevant evidence, the Tribunal is authorized to draw adverse inferences from the failure of that party to produce such evidence." [*Ultrasys., Inc. v. Islamic Repub. of Iran, Award in IUSCT Case No. 27-84-3 of 4 March 1983, Concurring Opinion of R. Mosk, 2 Iran-US C.T.R. 114, 115 (1983). See also Reza Said Malek v. Islamic Repub. of Iran, Award in IUSCT Case No. 534-193-3 of 11 August 1992, 28 Iran-US C.T.R. 246, ¶111 (1992)*].

57. CLAIMANT got aware of the RESPONDENT involvement in other arbitration with the same matter of dispute between black beauty and another party against RESPONDENT in annual breeder conference on 2 October 2018 [letter of Langweiler, ¶2, page 50] the CEO of the CLAIMANT was reached by Mr. Kieron Velazquez. He is the CEO of one of the CLAIMANT's regular customer which was working for the Mediterranean buyer in the other arbitration till 3o May 2018 [PO2, pg. 60, ¶ 40]. CLAIMANT applied its obligation to inform the tribunal about the involvement of RESPONDENT in other arbitration and the contractual breach by RESPONDENT [letter of Langweiller, pg 50].

58. The above-mentioned facts show the existence of reliable sources which can bring our dispute to a reasonable end and rules all together shows that CLAIMANT is allowed to bring the relevant evidence which is relevant from other arbitration. Which was obtained by CLAIMANT, not by a breach of confidentiality or even if there was a breach it was not happened by the CLAIMANT.

D. THE TRIBUNAL CAN CONSOLIDATE BOTH ARBITRATIONS.

59. Based on article 28.1 of the HKIAC 2018 "HKIAC shall have the power, at the request of a party and after consulting with the parties and any confirmed or appointed arbitrators, to consolidate two or more arbitrations" if the circumstances exist which under 28.1.a & b & c the conditions are "(a) the parties agree to consolidate; or (b) all of the claims in the arbitrations are made under the same arbitration agreement; or (c) the claims are made under more than one arbitration agreement, a common question of law or fact arises in all of the arbitrations, the rights to relief claimed are in respect of, or arise out of, the same transaction or a series of related transactions and the arbitration agreements are compatible." Moreover, one of the most important changes of the 2013 amendments relates to the joinder of third parties (Article 14) and to the consolidation of arbitration proceedings (Article 15). The arbitral tribunal is entitled to rule on the admissibility of the joinder of a third party upon request of a party of the proceedings or of the third party. The arbitral tribunal

must hear all persons involved and consider all relevant circumstances. In order to render its decision, the arbitral tribunal must also consider mandatory provisions of the statutory law of the country where the tribunal has its seat [Paul Oberhammer, Christian Koller, in Handbook Vienna Rules Article 14 mn 19 (WKÖ, 2014)].

60. To that extent, CLAIMANT is asking "If need be, the other Party in that arbitration may also be joined to the proceedings as the proceedings have also been conducted under the HKIAC-Rules.

61. And to consolidate both arbitrations all three criteria shall meet the grounds. Firstly the parties agree to consolidation of arbitrations, by the facts of the case there is no express statement or any other relevant fact which show that RESPONDENT does not want the Consolidation, what can be taking from the statement of RESPONDENT in JULIA CLARA FASTRACK's latter to the tribunal is that, RESPONDENT is concerned about the impossibility of consolidation claiming that the other arbitration is happening under HKIAC-Rules 2013 and our arbitration is happening under HKIAC-rules 2018 but to counter, the second element of consolidation foreseen is the claims should be the under same arbitration agreement, which is and if the RESPONDENT argue that the HKIAC-Rules 2013 are different from HKIAC-Rules 2018, to RESPONDENT surprise the Articles about the Consolidation are the same in both, and finally the third ground which talks about, if the arbitrations are not happening under the same arbitration agreements those other criteria shall meet the ground which they do.

62. Nonetheless, the HKIAC-Rules left the possibility of consolidating two arbitrations, as in our case both of the arbitrations are happening under HKIAC-Rules, CLAIMANT asked the tribunal for consolidation of arbitrations which would help out both proceedings positively.

E. PREVENTING CLAIMANT FROM PRESENTING ITS EVIDENCE WILL RISK ENFORCEMENT OF THE AWARD.

63. Under the New York Convention about the enforcement of the awards the Article V of NYC suggests five grounds about the risks of enforcement of award that if even one of the grounds are filled the award would not be enforced, the second element recognized by the NYC says that if the parties will not able to present their case the award would not be enforced. Invoking that CLAIMANT is foreseeing a possibility of risk to the enforcement of the award.

i. EACH PARTY MUST BE GIVEN EQUAL OPPORTUNITY TO PRESENT ITS CASE AND SHOULD BE TREATED EQUALLY.

64. There may well be good reasons for affording one party more time than another party to address an issue, or present its case, but the burden of proving that different is equal will almost always be on the party seeking to do so. And the ultimate touchstone will be that neither party will be favored, or disfavored and that both parties will be treated with equal fairness and respect [IBA rules AND submitting evidence, pg 35]. Additionally, a fundamentally fair "[arbitration] hearing requires only notice, the opportunity to be heard and to present relevant and material evidence and argument before the decision makers" [Sheldon v. Vermonty, 269 F.3d 1202, 1207 (10th Cir. 2001); Generica Ltd v. Pharm. Basics, Inc., 125 F.3d 1123, 1129-30 (7th Cir. 1997)]. Tribunals are acutely conscious of their obligations – under institutional rules, national law and the New York Convention [IBA Rules and submitting evidence, pg 118] to afford each party the opportunity to present its case [See, e.g., Böckstiegel, Presenting Evidence in International Arbitration, 16 ICSID Rev. 1, 8 (2001); Bühler & Dorgan, Witness Testimony Pursuant to the 1999 IBA Rules of Evidence in International Commercial Arbitration – Novel or Tested Standards?, 17(1) J. Int'l Arb. 3, 17 (2000); Hunter, The Procedural Powers of Arbitrators Under the English 1996 Act, 13 Arb. Int'l 345, 352 (1997). See also Methanex Corp. v. U.S.A., Partial Award on Jurisdiction in NAFTA Case of 7 August 2002, 14 (6) WTAM 109, ¶¶167-68 (2002)].
65. CLAIMANT is very much willing to have a fair arbitration with RESPONDENT and is definite about the tribunal's transparent proceedings and hereby asking the tribunal to an equal behavior toward both parties.
66. ISSUE TWO CONCLUSION: In conclusion, pursuant to HKIAC rules the tribunal has the authority to determine the admissibility of the evidence and tribunal should allow the CLAIMANT to present the evidence and was not involved in ant terms of breach of confidentiality.

ISSUE III. CLAIMANT is entitled to the payment of 1.250.000 USD or any other amount resulting from an adaptation of the price based on clause 12 of the FSSA and the CISG.

67. RESPONDENT on 21th March 2017 contacted CLAIMANT, and inquired about the availability of Nijinsky III. [Not. Of Arb, pg. 5, ¶ 5].CLAIMANT then offered RESPONDENT 100 doses of Nijinsky III [Not. Of Arb, Pg. 5, ¶ 5]. Thereupon, the parties agreed on a shipment of 100 doses of Nijinsky III in three instalments [Ex C5, pg.14, ¶ 8].but, before the last shipment of Nijinsky III

was performed, the Equatorianan government, where RESPONDENT is seated, imposed a 30 % tariff upon all agricultural goods from Mediterraneo, where CLAIMANT has its place of business, including on animal semen [Ex C6, pg.15, ¶ 1].

68. The fact that RESPONDENT is now insisting on CLAIMANT bearing all the additional costs does not only lack any factual ground but also poses major challenges for CLAIMANT. The last two years have been financially difficult for CLAIMANT due to several reasons through extensive restructuring measures and a considerable cut of the work force. CLAIMANT has been able to stay in business but it would be impossible for CLAIMANT to shoulder this additional 30% tariff [EX C8, ¶5, pg17]. During all of this, RESPONDENT was aware of the rumors in the market about Claimant finding itself in financial difficulties [PO2, pg. 58, ¶ 1].

69. For the current FSSA, CLAIMANT calculated a profit margin of 5 per cent for the transaction. If it would bear the costs of an additional 30 % tariff, CLAIMANT would not only sacrifice its profit, but also and even worse make a loss of 25 per cent. In light thereof, CLAIMANT is not even asking for a 30 % price adaptation. CLAIMANT would even renounce from its profit of 5 %, but only wants to be saved from facing bankruptcy, especially when there is no legal ground allowing RESPONDENT to retain the outstanding payment.

70. Thus, CLAIMANT should be and is entitled to the outstanding payment resulting from an adaptation of the price, firstly, based on clause 12 of the FSSA, (A) and secondly under the rules of the CISG.(B)

A. CLAIMANT is entitled to the payment of 1.250.000 USD or any other amount resulting from an adaptation of the price based on clause 12 of the FSSA.

71. In the present case, the imposition of 30% tariffs on agricultural goods from Equatoriana constitutes hardship (1) besides, CLAIMANT is entitled to the payment resulting from adaptation of the price under new circumstances (2) moreover CLAIMANT will not bear all of the risks related to the change of delivery terms (DDP) under clause 12 of FSSA. (3)

i. CLAIMANT is not responsible for the 30% tariffs pursuant to the hardship clause under article 12 of the FSSA.

72. Based on clause 12 the "Seller shall not be responsible for lost semen shipments or delays in delivery not within the control of the Seller such as missed flights, weather delays, failure of third party service, or acts of God neither for hardship, caused by additional health and safety requirements or comparable unforeseen events making the contract more onerous." [Ex C5, pg.14,

¶ 12].Principally, the parties should create adequate provisions in their own contract (hardship clauses'), [*MCKENDRICK, E, pp. 438-439*].

73. Hardship involves the presence of the above conditions: (1) “Unforeseeable at the time when a contract was entered into” (2) Which results in the performance of the contract by one party being “excessively onerous”(3) When such party “had not agreed to bear such risk. Moreover it is the function of Hardship to prevent from the situation where unforeseen circumstances essentially change the contractual equilibrium *[Alain Pietrancosta Professeur ,page3; URIBE 2011, pp. 14-15. and 253*]

74. That is why, parties should create adequate provisions in their own contract in order to prevent any uncertain consequences resulting from these situations. In the present case the parties did so with article 12 of their FSSA which states that CLAIMANT “is not responsible for hardship or comparable unforeseen event that make the contract more onerous” [Ex C5, pg. 14, ¶14].

75. CLAIMANT was astonished that after years of continuing growth of the system of free trade it has received a second serious announcement of the Government of Equatoriana imposing a tariff of 30 per cent upon all agricultural goods from Mediterraneo [Ex C6, pg 15, ¶ 1; Not. Of Arb , pg. 6, ¶11]. No one expected such tariffs because the prime minister of Equatoriana was from Progressive Liberals and Equatoriana has always been an ardent supporter of free trade. In addition to that, Equatoriana, when facing difficulties with other states, has always tried to solve the dispute amicably [Not. Of arb, pp. 7, 6, 19, ¶¶19,10,7]

76. Therefore, the tariffs were unforeseen rendering the hardship clause to enter into force to prevent the unforeseen event to alter the equilibrium of the contract. As in the present case the tariffs make the shipment 30% more expensive and destroy the profit margin of 5% [Not. Of Arb, pg.19, ¶ 7; Ex C8, Pg17, ¶4] hardship is eventually given and exempting CLAIMANT from liability.

ii. CLAIMANT is entitled to the payment resulting from an adaptation of the price under new circumstances.

77. The need to adapt contracts to changed circumstances is brought about by the impact of time on long-term contracts, after the conclusion of the contract and during the process of its fulfillment new circumstances may arise, which basically disturb the initial balance of the mutual rights and obligations of the parties.

78. Which further fulfillment of the contract under the initial contractual clauses could cause substantial hardship to one of the parties *[Zhivko Stalev, Kluwer-Deventer, 1978*]. Moreover In a

long-term contract, if the economic balance is significantly disturbed by unforeseen events, the contract should be adjusted to preserve it, when the parties cannot agree on the scope of the adjustment, they have recourse to administrative tribunals to re-establish the balance. *[incoterm 2000, January 2011, B5, pg 4*].

79. On one hand, under the maxim *clausula rebus sic stantibus* the contract remains binding provided that things remain unchanged *[Case No. 4761]*on the other hand this is up to the parties to guard against risks by inserting price adjustment to protect themselves *[Frederick R, pg. 1]*
80. A *c*ontrac*t* should be adapted for rebalance the position of the parties to the original contract equilibrium. *[Norton roes Fulbright, pg21].* Moreover Rebalancing of benefits – or adaptation clauses – provide for the contract to be adapted to rebalance the position of the parties to the original contract equilibrium, Renegotiation clauses provide for the contract to be renegotiated either upon the occurrence of any event which was unforeseen as at the date of the contract, is outside the control of the parties and which negatively affects the economic equilibrium beyond a stated threshold *[Norton roes Fulbright, pg21].*
81. A contract remain binding that the things remain unchanged. In the present problem by the newly imposed tariffs of Equatoriana CLAIMANT badly affected [Langweiler mail, ¶2, pg. 50].Further "Claimant has been making losses since 2014 primarily due to the high interest payments for the loan taken on to finance the new stables in 2013 and the costs for the restructuring measures. The restructuring plan which Claimant had agreed with its creditors in 2014 provided that Claimant would be profitable again from 2017 onwards. The automatic prolongation of the two main credit lines depended on being profitable in 2017 and 2018 respectively. With the additional revenues from the sale of the frozen semen Claimant had planned to make a profit in 2018 of 300.000 USD after 180.000 USD in 2017. That plan would be seriously endangered if Claimant had to bear the 1.250.000 USD. Negotiations of a new credit line will most likely be very difficult as one of the major creditors is by now the house bank of Claimant's largest competitor who is interested in buying the dressage part of Claimant. Thus, the bank would probably make the sale a precondition for the entry into a new credit. [PO2, Pg. 59, ¶ 29].
82. Now the imposed tariffs changed the circumstances and it's sufficient to justify a request for adaption [Langweiler mail, pg. 50, ¶ 2]. Highlighting the fact that the parties wanted to continue their business relationship, there is an even greater need for contract adaptation [Ex C 3, Pg. 11, ¶ 1].further RESPONDENT accepted the need to adapt the contract and replied "the arbitrator

should adapt the contract" further RESPONDENT accepted the general need for a price adaptation [Not. Of Arb, pg. 6, ¶ 13; Ex C8, pg.17, ¶ 4]. In lighting the above facts CLAIMANT is entitled to the outstanding payment of 1,250,000 USD resulting from adaptation of the price.

iii. CLAIMANT will not bear all of the risks related to the change of delivery terms (DDP) under Clause 12 of the contract

83. Clause 12 says that the "seller is not responsible for additional health and safety requirements or comparable unforeseen event that make the contract more onerous [Ex C5, pg.14, ¶12]. Moreover, under the DDP INCOTERMS the buyer must pay all the costs relating to the goods from the time they have been delivered. [Incoterm 2000, January 2011, B5, pg. 4].
84. When RESPONDENT insisted on a delivery on the basis of DDP, CLAIMANT solely accepted on condition that it would under no circumstances bear all the other risk related to the change of delivery terms. [Ex C3, pg. 11, ¶ 2; Not. Of Arb, pg. 7, ¶ 19]. That, RESPONDNET explicitly accepted which in turn means that it has always been RESPONDENT who is responsible for any bulk of additional costs. [Ex C8, Pg. 8, ¶ 3]. Having said this, RESPONDENT owes CLAIMANT the outstanding amount of 1.250.000 USD.

B. The Tribunal should award the Claimant $1.250 million under the CISG through adaptation of the price so as to share the cost of the unforeseen tariff increases

i. The CISG rules are applicable to the contract

85. The CISG provides that parties to a case are open to exclude the applicability of the convention either at all or in part [CISG, article 6]. Additionally, it is upon the court to decide whether the parties have excluded or derogated from a convention. [CISG digest, p33; Kantons].
86. Moreover, derogation from the convention requires an affirmative and clear agreement of parties to the case [CLOUT case, No 1025; Oberlandesgericht; CLOUT case No. 904; CLOUT case No. 575; U.S District court; Gaungzhou; CLOUT case No. 828]. In the case in hand, there is not such an affirmative and clear derogation or exclusion of the convention. Further, the convention can only be excluded in the cases where the parties have agreed on terms that are incompatible with the convention [Obergericht, Switzerland].
87. Here the clause 12 of the contract in no case constitutes a derogation from the provisions of the CISG. Therefore the CISG is applicable in this case between the parties.

i. CLAIMANT is entitled to an outstanding payment of 1,250,000 USD under article 8 CISG

88. Analyzing the parties' intention to incorporate clause 12 to their FSSA sheds light to the legal ground of CLAIMANT's entitlement to receive the outstanding payment.
89. On which CLAIMANT's intention was to create a situation where the parties could overcome the unforeseen situations. To the end based on article 8(1) CISG "[f]or the purposes of this Convention statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware what that intent was.
90. Moreover, article 8 (1) permits a substantial inquiry into the parties' "subjective" and "real" intent, "even if the parties did not engage in any objectively ascertainable means of registering this intent" [CISG Digest, P55; CLOUT case, No 222]. Further, under CISG "[i]n determining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to all relevant circumstances of the case [CISG, article 8(3)].
91. On the other hand, where it is not possible to use the subjective intent standard in article 8 (1) to interpret a party's statements or conduct [U.S. District Court] one must resort to "a more objective analysis" [Arbitral award No. 8324] as provided for by article 8 (2), [Hoge Raad] which should allow the courts to determine "a presumptive" [Handelsgericht Aargau] or "normative" [Handelsgericht Aargau; CLOUT Case No. 877] intent.
92. Under this provision, statements and other conduct of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances. [CISG Digest P 61; Kantonsgericht St. Gallen, Switzerland].
93. Here, the FSSA is governed by the law of Mediterraneo. [Not Of Arb, ¶15; PO2 ¶4]. Said Law of Mediterraneo provides for a broad interpretation of arbitration agreements irrespective of an allegedly narrow wording [Not of Arb, ¶ 16]. Accordingly, the adaptation clause was supposed to cover not only the most prevalent risk of changes but also the imposition of Tariffs [Not of Arb ¶ 19]. Likewise the only reason of not mentioning the imposition of tariffs was that no one was expecting such tariffs from the government of Equatoriana [Not. Of Arb. ¶19; PO2 ¶23]
94. Notwithstanding that, CLAIMANT complied with its obligations and delivered its last shipment of the remaining 50 doses on 23 January [Not Of Arb. ¶ 12] as it was extremely important to deliver timely [Not. Of Arb, ¶12]. To that end, CLAIMANT is entitled to the price of payment 1.250.000 under article 8 of the CISG.

ii. The contract must be adopted under the article 79 of the CISG

95. Under the CISG "[a] party is not liable for a failure to perform any of his obligations if it proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences." [CISG art. 79(1)].

96. Moreover, under the doctrine of "rebus sic" a circumstance which makes the situation onerous and economically impossible can be considered an act of impediment [talon, P 592]. Also, "a change of circumstances that could not reasonably be expected to have been taken into account, rendering performance excessively onerous ("hardship"), may qualify as an "impediment" under art 79(1)." [CISG- AC Opinion No 7].

97. The force majeure excuse only applies if the obligor could not reasonably avoid the impediment or overcome it or its consequences [Force Majeure, P320; (Article 79(1) CISG; Article 7.1.7(1) UPICC; Article 8:108(1) PECL)]. Here the CLAIMANT meets the requirements which are stated in article 79(1) CISG. To illustrate, CLAIMANT delivered its two shipments and before the last shipment the country of RESPONDENT un-expectedly imposed 30% tariffs [EX. C. ¶9]. Additionally, imposition of tariffs was not something foreseeable by the parties at the time of making the contract [Ex. C6, ¶10] on the other hand, RESPONDENT has without permission of CLAIMANT has sold the semen to the third party and made a profit margin of 25% [PO2, ¶19] and in no case would economically be damaged if they bear the amount of $1.25 Million [PO2 ¶30]

98. To that end, CLAIMANT should not be the one who should be burdened all of these losses. Thus, under article 79 the price of the semen must be adopted by the parties.

iii. If the matter is not expressly settled by either the convention's text or its general principles, it must be settled in conformity with the law applicable by virtue of the rules of private international law

99. The "Questions concerning matters governed by [CISG] which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law [CISG, Art. 7(2)], here being the UNIDROIT Principles.

100. In in the cases where the UNIDROIT contradicts with CISG, the CISG prevails [Carlsen, §2A]. Here the UNIDROIT embodies the principles which the CISG is based on [Case No. 229].

Moreover, under the UNIDROIT Principles, a hardship provision is an internationally accepted principle in the law of contract [Id; ICC 9029; ICC 8873].

a) CISG permits price adaptation under UNIDROIT article 6.2.2

101. Under the law, "there is hardship where the occurrence of events fundamentally alters the equilibrium of the contract either because the cost of a party's performance has increased or because the value of the performance a party receives has diminished" and "(a) the events occur or become known to the disadvantaged party after the conclusion of the contract."

102. Likewise, "the events could not reasonably have been taken into account by the disadvantaged party at the time of the conclusion of the contract" lastly, "the events are beyond the control of the disadvantaged party." [UNIDROIT principles, P 6.2.2]. Hardship can be invoked if the alteration of the equilibrium of the contract is fundamental [Commentary on UNIDROIT Principles, P 213].

103. In our case, CLAIMANT meets all the requirements of these hardship provision. To illustrate, the government of RESPONDENT imposed 30% tariffs over agricultural products coming from Mediterraneo which included the horse semen [Not. Of Arb. ¶¶10,11 ;Ex. C. 6]. CLAIMANT was surprised since the government of Equatoriana has always been an ardent supporter of free trade [EX. Cl. ¶10; Cl. Ex. C. 6]. To that end, bearing the costs of 30% tariffs by the CLAIMANT is something un-acceptable for CLAIMANT. Therefore, a hardship situation is given resulting in the need for Contract adaptation.

b) CISG is allowing the price adaption under UNIDROIT article 6.2.3

104. Under the law, the hardship can have the following effects on parties of a contract, firstly, "In case of hardship the disadvantaged party is entitled to request renegotiations. The request shall be made without undue delay and shall indicate the grounds on which it is based."

105. Secondly, "the request for renegotiations does not in itself entitle the disadvantaged party to withhold performance." [UNIDROIT principles, P 6.2.3].

106. Further, the disadvantaged party must request the other party to enter into renegotiations of the original terms of the contract with a view to adapting them to the changed circumstances [Commentary on UNIDROIT Principles, P218].

107. Moreover, parties to the contract are under an obligation to negotiate alternative contractual terms which reasonably adjust to the consequences of the changed circumstances within a reasonable time of the invocation of the clause [ICC Hardship Clause 2003, ¶ (2) (b)].

108. Additionally, in numerous cases courts have stated that the parties must co-operate with each other which is considered to be the general principal of good faith *[CISG digest, P43; Oberlandesgercht Celle, Germany, 24 July 2009; Landgericht Neubrandenburg, Germany, 3 August 2005; Foreign Trade Court of Arbitration attached to the Yugoslav Chamber of Commerce, Serbia, 9 December 2002; CLOUT case No. 445; Internationales Handelsrecht, 2002, 14 ff].*

109. Further, the party is entitled to request renegotiations. The request must be submitted timely–right after the occurrence of the event–and must be discussed. Having entered the renegotiations, the parties must intend to reach an agreement, must observe the principle of good faith, and may not use the renegotiations as a pure tactical maneuver [Bonell, P119-20]

110. Here, after the imposition of the tariffs by both governments, CLAIMANT and RESPONDENT immediately started negotiations about the price adjustment [Not. Of Arb. ¶12; Ex. C. 7]. During a telephone call from CLAIMANT with Mr. Shoemaker which is an employee of RESPONDENT, Mr. Shoemaker reasonably created the impression that RESPONDENT was willing to adjust the price. Mr. Shoemaker immediately expressed that he does comprehend the situation and will find an agreement on the price in case of "such high additional" tariffs.

111. In confidence thereof, CLAIMANT delivered the remaining 50 doses to RESPONDENT and complied with its contractual obligations [Not.Of Arb, ¶13; Cl. Ex. C. 8] RESPONDENT in this case has acted in bad faith and has violated its contractual obligations by reselling the semen in an increased price to other breeders without the permission of CLAIMANT [Ex. C8; R. P.O.2 ¶ 19].

112. Since in the case, CLAIMANT in clear terms had stated that the semen may not be re-sold to third parties without our express written consent [Ex. C3, ¶3]. To that end, RESPONDENT without the permission of the CLAIMANT resold the semen to third parties from which they had a profit margin of 25% [PO2 ¶19]. When confronted with its contractual breach, RESPONDENT's CEO Ms. Kayla Espinoza, completely lost temper and ultimately dismissed all possible negotiations on an adjustment of the price. Therefore, it is now up to the tribunal to declare CLAIMANT as entitled of receiving an adjusted price of USD 1.25 Million USD.

113. **CONCLUSION of ISSUE 3:** CLAIMANT is entitled to the amount of 1.250.000 for CLAIMANAT has delivered the shipments in accordance with the agreed terms of the contract. Additionally, CLAIMANT fulfilled its obligation under CISG. Because firstly, CLAIMANT didn't failed to control the change of circumstances secondly, CLAIMANT is entitled to the payment under article 8 of CISG for the contractual clause covers the tariffs and RESPONDENT

has resold the doses to the third party. Additionally, CLAIMANT has fulfilled its good faith obligation under CISG article 7. Therefore the contract's price must be adapted by the tribunal by considering the UNIDROIT and CISG hardship and adaption provisions.

REQUEST FOR RELIEF

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

Arbitral Tribunal has jurisdiction to order that Mediterraneo law governs the interpretation of the contract and it has the power to adapt the contract. [**ISSUE ONE**]

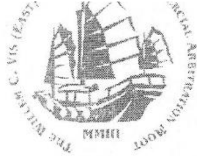
CLAIMANT is entitled to submit evidence regarding other arbitration proceeding to Arbitral Tribunal. [**ISSUE TWO**]

CLAIMANT is entitled to 1.250.000 USD resulting from an adaptation of the price. [**ISSUE THREE**]

Respectfully Submitted,

Shahrbano Khaliqi, Ismail Noorzad, Muzhgan Mirmast,
Ramin Mansoory

Counsel for CLAIMANT



Certificate and Choice of Forum

To be attached to each Memorandum

I **Basira Paigham**, on behalf of the Team for (name of School)

Balkh University 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.

Or

- ☐ We are submitting the same Memorandum to both Vis East Moot and Vienna Vis Moot, and we choose to be considered for an Award in (check one box)
  - ☐ Vis East Moot in Hong Kong, or
  - ☐ Vienna Vis Moot

Authorised Representative of the Team for (School name) **Balkh University**

Name **Basira Paigham**

Signature ____________________