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UNIVERSIDAD NACIONAL AUTÓNOMA DE MÉXICO (UNAM)

MEMORANDUM FOR CLAIMANT

PHAR LAP ALLEVAMENTO V. BLACK BEAUTY EQUESTRIAN

PHAR LAP ALLEVAMENTO	*V.*	**BLACK BEAUTY EQUESTRIAN**
CLAIMANT		RESPONDENT
RUE FRANKEL 1		2 SEABISCUIT DRIVE
CAPITAL CITY MEDITERRANEO		OCEANSIDE EQUATORIANA

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TABLE OF ABBREVIATIONS

Arbitration Clause	Arbitration Clause within clause 15
CISG	United Nation Convention on Contracts for the International Sale of Goods
Claimant	Phar Lap Allevamento
Contract	Frozen Semen Sales Agreement
Evidence	
Hague Principles	Hague Principles on Choice of Law in International Commercial Contracts.
i.e	*id est* (that is)
In	In memerandum
in casu	In the case at hand
ibid.	*ibidem* (in the same place)
Lex arbitri	Law of the seat of arbitration.
Memorandum	the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
Model Law	UNCITRAL Model Law on International Commercial Arbitration with amendments (2006)
No.	Number
Notice of Arbitration	CLAIMANT's Notice of Arbitration
NY Convention	The Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
Parties	Jointly CLAIMANT and RESPONDANT

PO1	Procedural Order No. 1
PO2	Procedural Order No. 2
Respondent	Black Beauty Equestrian
supra	above
UNCITRAL Rules on Transparency	UNCITRAL Rules on Transparency in Treaty-based Investor-State
UNIDROIT Principles	UNIDROIT Principles of International Commercial Contracts (2016)
§	Paragraph

TABLE OF AUTHORITIES

Cites As	**Full Citation**
Bernini §91	Report: Adaptation of contracts New trends in the development of International Commercial Arbitration and the Role of Arbitral Tribunal and other institutions, Sander edition 1983, Giorgio Bernini
Black´s Law	Black´s Law Dictionary Available at: http://thelawdictionary.org/
Born §15, §33, §59, §62	Born, Gary B. *International Commercial Arbitration: Commentary and Materials*. Second ed., Transnational Publishers, 2001.
Brunner §91, 97, §99, §101, §104	Force Majeure and Hardship under General Contract Principles: Exemption for non-performance in international arbitration. International Arbitration Law Library Volume 18 Kluwer Law international 2008, Christoph Brunner
Da Silveira §93, §97, §106	Trade Sanctions and International Sales: An Inquiry into comercial arbitration and Commercial Litigation, Part IV, Chapter 11: Adaptation of the contracto n Grounds of hardship, Mercedeh Azerdo Da Silveira
DiMatteo §98, 107	Contractual Excuse Under CISG: Impediment, Harship and the Excuse Doctrines, Volume 27 Issue comercial edition Pace Int´I Law Rev. 258 2015, Larry A. DiMatteo
Faruque, A. §45	(2006). The rationale and instrumentalities for stability in long-term state contracts. Journal of World Investment Trade 7(1), 85-112.
Garro §108,	Comparisson between provisions of the CISG regarding exemption of liability for damages (art.79) and the counterpart provisions of the UNIDROIT principles (Art.7.1.7) 2005, Alejandro M. Garro

Goldstein, B. H. §46	(1980). Power of arbitrators in commercial arbitration (with forms), the. Practical Lawyer 26(6), 69-76.
Gordon §37	Subjective and objective mens rea. Criminal Law Quarterly 17(4), pg 371
Guido §37	European Business Law Review vol. 24, no. 1 (2013): p. 65-94
Hanotiau, B. §50	(2014). The law applicable to arbitrability. Singapore Academy of Law Journal 26 (Special), pg 880
Honnold §107	Uniform Law for International Sales under 1980 United Nations Convention, 3rd edition 1999, Jhon O. Honnold
Huber Mullis §108	The CISG: A new textbook for students and practicioners, 2007, Peter Huber Alastair Mullis
Mayank §71	Mayank] Samuel. "Confidentiality in International Commercial Arbitration: Bedrock or Window-Dressing?", Kluwer Arbitration Blog (2017)].
Oxford Dictionary §82	Oxford Dictionaries Online Available at: https:// oxforddictionaries.com
Rappis, J. §45	(1993). The use of contract interpretation by professional sports arbitrators. Marquette Sports Law Journal3(2), 215-236
Rosengren §38	Rosengren, Jonas. "Contract Interpretation in International Arbitration," Journal of International Arbitration vol. 30, no. 1 (February 2013): p. 1-16
Schwenzer §101, §110	Commentary on the UN Convention on the International Sale of Goods (CISG), 3erd edith edited by Schwenzer
Tampieri, T §46	(2001). International arbitration and impartiality of arbitrators Journal of International Arbitration 18(5), 556
Vogenauer, Stefan §42	(2007). Interpretation of Contracts: Concluding Comparative Observations.
Zeller, B. §48	(2002). The Black Hole: Where are the Four Corners of the CISG. International Trade and Business Law Annual 7, 251-264]

TABLE OF ARBITRAL AWARDS

Cited as:	**Full Citation**
Case No. 12460 §109	ICC International Court of Arbitration,2004
Case No. 173/2011 §90	International Arbitration Court of the Chamber of Commerce and Industry of the Russian Federation, 23.08.2012

Case No. 56/1995 §102	Bulgarska turgosko-promishlena palata (Bulgarian Chamber of Commerce and Industry), 24.04.1996
Case No. SCH-4366 §109	Internationales Schiedsgericht der Bundeskammer der gewerblichen Wirtschaft - Wien (Vienna), Austria, 15.06.1994
CLOUT 1405 §112	International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry, 23 January 2012
Macromex v. Globex §106, §107	American Arbitration AssociationMacromex Srl. v. Globex International Inc. 12/12/2007

TABLE OF COURT DECISIONS

Australian

Esso Australian v Plowman §63	Esso Australian Resources Ltd v Plowman, [1995] HCA 19; 183 CLR 10; 69 ALJR 404; 128 ALR 391

England

Black Clawson v. Papier werke §30	*Black Clawson Ltd v. Papierwerke ltd*
Sonatrach Petroleum v. Ferrell International §30	*Sonatrach Petroleum Corp v Ferrell International Ltd* *Commercial Court* *4 October 2001*

Germany

Cited as:	**Full citation:**
CLOUT 985/01 §106, §111	Oberlandesgericht München 05.3.2008
Case No. 136/92 §109	Landgericht Aachen, 14.05.1993

Italy

Cited as:	**Full citation:**
Nuova v. Fondmetal §109	Nuova Fucinati S.p.A. v. Fondmetal International A.B., Tribunale Civile di Monza, 14.01.1993.

Poland

CLOUT 1305 §111	Warsaw Court of Appeals, 20 november 2008, Case No. I ACa 1258/07

Paraguay

Ofelia Valenzuela v. Granos y Alimentos §87	Ofelia Valenzuela Fernandez v. Paraguay Granos y Alimentos S.A, Tribunal de Apelación en lo Civil y Comercial de Asunción, Sexta Sala, 06.10.2016, Case No. 66/2016

Sweden

Cited as:	Full citation:
Case No. NJA 2006 s.638 §82	Högsta Domstolen (Supreme Court), 11 December 2006, Case No. NJA 2006 s.638
Trade Finance. v Bulgarian Foreign Trade Bank	A.I. Trade Finance Inc. v Bulgarian Foreign Trade Bank Ltd, Sup. Ct. Sweden, T 1881-99 (October 27, 2000)

Switzerland

Case No. 960-0013 §116	Handelsgericht Aargau, 26.09.1997

United States

Silverthorne	Silverthorne Lumber Co., Inc. v. United States, 251 U.S. 385 (1920)

Lumber Co. v. United States §76	
Wong Sun v. United States §77	Wong Sun v. United States, 371 U.S. 471 (1963)
Castagno v. Church §35	Castagno v. Church, 552 P.2d 1282 (Utah 1976)]
Channel v. Balfour §28	*Channel Tunnel Group Ltd. v Balfour Beatty Construction Ltd*
Convergent Wealth v. Lydian Holding §51	Convergent Wealth Advisors LLC v Lydian Holding Co., No. 12 CiV. 1199, 2012 WL 2148221, at *4 (S.D.N.Y June 13, 2012)].
Hayhurst's Estate §54	In re Hayhurst's Estate, 1970 OK 224, 478 P.2d 343

OTHER SOURCES

CISG-AC Opinon No.7 §122	CISG Advisory Council Opinion No.7: Exemption of liability of damages under article 79 of the CISG, 11th meeting Wuhan, Peoples Republic of China 12 October 2007, Rappoteur: Alejandro M. Garro
INCOTERMS GUIDANCE 2010 §83, §84, §85.	INCOTERMS GUIDANCE 2010 by the International Chamber of Commerce (ICC) ICC Rules for the use of domestic and international trade terms
UNCITRAL Digest §99, §104	UNCITRAL Digest of Case La won the United Nations Convention on Contracts for the International Sale of Goods 2016
UNIDROIT PRINCIPLES 2016 §81, §83, §86, §88, §89, §90, §116, §117	UNIDROIT PRINCIPLES of international comercial contracts 2016 Published by International Institute for the Unification of Private Law
World Customs Organization §107	List of Animal Originated Products; Not Elsewhere Specified or Included (World Customs Organization)

STATEMENT OF FACTS

1. **Phar Lap Allevamento** ("**CLAIMANT**"), company located in Capital City, Mediterraneo is the oldest and most renowned stud farm, covering all areas of the equestrian sport. Phar Lap is particularly known for its success in racehorse breeding. Nijinsky III, one of the most successful racehorses ever is the star among Phar Lap's stallions.

2. Black Beauty Equestrian ("**RESPONDENT**"), located in Oceanside, Equatoriana is renowned for its broodmare lines, which are world champion show jumpers and international dressage champions. Recently, Black Beauty expanded its business to racehorses.

3. On **21 March 2017**, RESPONDENT contacted CLAIMANT regarding the availability of Nijinsky III for its newly started breeding program, since the Equatorianian Government had temporarily lifted the ban on artificial insemination for racehorses.

4. Via 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.

5. On **12 April 2017**, both primary negotiators between CLAIMANT and RESPONDENT ("**Parties**"), Mr. Napravnik and Mr. Antley, were severely injured in a car accident after the annual colt auction in Danubia, thus they had to be replaced for the finalization of the Contract.

6. On **6 May 2017**, the Parties signed the Frozen Semen Sales Agreement ("**Contract**"), agreeing to three shipments. The first shipment, consisting of 25 doses was shipped was sent on **20 May 2017** and the second shipment of 25 doses on **3 October 2017**.

7. On **November 2017**, the newly elected President of Mediterraneo unpredictably announced a 25% tariff on agricultural products form Equatoriana. Consequently, the Equatorianian government retaliated by imposing a 30% tariff on selected products form Mediterraneo, which included animal semen.

8. The third shipment of 50 doses, which was due on **23 January 2018**, was duly delivered notwithstanding the pending conclusion of the price adjustment negotiations, since RESPONDENT had clearly stressed the importance of a timely delivery and created the understanding of accepting the need for a price adaptation.

9. After several communications and unsuccessful efforts to solve the dispute amicably, on **31 July 2017** CLAIMANT submitted its Notice of Arbitration.

FIRST ISSUE: THE ARBITAL TRIBUNAL HAS JURISDICTION AND POWER UNDER THE ARBITRATION AGREEMENT TO ADAPT THE CONTRACT.

I. THIS ARBITRAL TRIBUNAL HAS JURISDICTION TO HEAR THIS CASE.

Considering that this Arbitral Tribunal has the competence to rule on its own jurisdiction (Model Law Article 16 §1) CLAIMANT offers the following considerations:

a. THE ARBITRATION CLAUSE IS VALID AND COVERS THE INSTANT DISPUTE.

10. The present dispute arises from the Contract entered into, by and between the Parties on May 6th, 2017, in which the following arbitration agreement is contained ("**Arbitration Clause**"):

> "*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 administered by the Hong Kong International Arbitration Center (HKIAC) under the HKIA Administered Arbitration Rules in force when the Notice of Arbitration is submitted.*
>
> *The seat of arbitration shall be Vindobona, Danubia.*
>
> *The number of arbitrators shall be three. The arbitration proceedings shall be conducted in English".*

11. According to article 2 of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention**"), "an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration" is considered valid and shall be recognized between the Parties. Additionally, this arbitration clause is not only in compliance with the HKIAC, its Rules and the New York Convention, to which the Parties' countries and Danubia, country elected by the parties as the seat for the arbitration, are part of, it is also valid as per the UNCITRAL Model Law on International Commercial Arbitrations ("**Model Law**"), law consistent with the arbitration laws of the Parties and the seat of arbitration.

12. Moreover, the Arbitration Agreement broadly contemplates any and therefore all disputes arising from the contract (Problem p. 14 C.15), and as stated above and in the Notice of Arbitration, this dispute originated from such Contract. In order for a dispute to be recognized and resolved under arbitration, the arbitration agreement must contemplate such dispute, whether expressly or as derived conflict form the specific legal relationship (Model Law, Article 7). The present dispute arose from the Contract, its negotiations and performance, thus it is a controversy covered by the Arbitration Clause.

13. On the other hand, although the Notice of Arbitration was given on July 31st, 2018, by agreement of the Parties via telephone conference held on October 4th 2018, the applicable rules to this arbitration proceeding are the newest version of Hong Kong Arbitration Rules, which entered into force on November 2018 [PO1 §I].

14. Considering all the above-mentioned facts, i) the Arbitration Clause is valid and must be recognized between the Parties, and ii) this arbitral tribunal has jurisdiction to hear this case and resolve the dispute.

II. THE ARBITRATION AGREEMENT IS GOVERNED BY, AND SHOULD BE CONSTRUCTED IN ACCORDANCE WITH, THE LAW OF MEDITERRANEO.

15. Several laws may influence an arbitration agreement; "different national laws provide different rules applicable at different stages of the arbitral process" [Born, p.42, §2]. Therefore it is highly important to understand how each law affects an international arbitration, and as such issue arose in this case, how should the applicable law or laws to an international arbitration be determined when there is no express choice contained in the arbitration agreement.

16. It is so that CLAIMANT intends to give this Arbitral Tribunal al necessary consideration for it to confirm that the law of Mediterraneo governs the Arbitration Agreement.

a. THE CONFLICT OF LAWS RULES APPLICABLE TO THIS ARBITRATION SUPPORTS THE DESIGNATED LAW OF THE CONTRACT.

17. The conflict of laws rules of the Parties are a verbatim adoption of the Hague Principles on Choice of Law in International Commercial Contracts ("**Hague Principles**"). [PO2, §43]

18. Article 2 of the Hague Principles allow the Parties to agree upon the governing law for a contract, enabling them to agree on more than one applicable law, to the extent where "the parties may choose (a) the law applicable to the whole contract or to only part of it; and (b) different laws for different parts of the contract."

19. To consider valid a choice of law, or a modification to such law, to be considered valid, it "must be made expressly or appear clearly from the provisions of the contract or its circumstances". Therefore, the choice of law for the Contract is valid and has not been modified or amended in any way.

20. Additionally, clause 14 of the Contract expressly states the law of Mediterraneo and the United Nations Convention on Contracts for the International Sale of Goods of 1980 ("**CISG**")", matter agreed by the parties and which is not in dispute by the Parties.

21. For the above-mentioned reasons, it can be concluded that the applicable laws for the Contract are the Law of Mediterraneo and CISG.

22. This Principles also clarify that "this Principles do not address the law governing: […] b) arbitration agreements and agreement on choice of court;", thus, after addressing and emphasizing that the agreed applicable law to Contract is valid, we continue demonstrating how the applicable law to the arbitration agreement is, in this case, also the law of Mediterraneo.

b. THE APPLICABLE LAW TO THE ARBITRATION AGREEMENT IS THE LAW OF THE UNDERLYING CONTRACT.

23. In this case, the arbitral clause contained in the Contract did not expressly state the applicable law, it was intended for it to be the same as the applicable law to the Contract. The only issue changed and addressed during the negotiations of the Contract was the seat of the arbitration, which does not imply, by any means, a choice of an applicable law.

24. However, the claim of RESPONDENT, states that the intention of the Parties was for it to be the law of Danubia, which clearly shows a misunderstanding by RESPONDENT for the following reasons, CLAIMANT sustains that the law governing the Arbitration Agreement is the same as the Contrac; the fact that the seat of the arbitration was negotiated and agreed to be Danubia does not imply that the law for the Arbitration Agreement was changed or

negotiated. CLAIMANT was always clear that the law applicable to the Contract would, by all means, be the law of Mediterraneo, only agreeing to arbitration under the rules of the HKIAC in a neutral country [Problem, R2, p. 34].

25. In addition, it is highly important to keep in mind that an international arbitration may involve several laws or legal rules, usually up to five different law systems may be identified and have inference in an arbitration:

    1) "The law governing the arbitration agreement and the performance of that agreement;

    2) The law governing the existence and proceedings of the arbitral tribunal (the *lex arbitri*);

    3) The law, or the relevant legal rules, governing the substantive issues in dispute (generally described as the 'applicable law', the 'governing law', 'the proper law of the contract', or 'the substantive law');

    4) Other applicable rules and non-binding guidelines and recommendations; and

    5) The law governing recognition and enforcement of the award (which may, in practice, prove to be not one law, but two or more, if recognition and enforcement is sought in more than one country in which the losing party has, or is thought to have, assets)." [Redfern and Hunter]

26. By observing and analyzing the arbitration agreement between the Parties, we can see that the following laws are determined:

    2) The *lex arbiti*, which is the law of the seat of the arbitration (law of Vindabona, Danubia) [Problem, C5, p.14]; and

    3) The law governing the substantive issues in dispute (Law of Mediterraneo and CISG) [íbid.].

27. These correspond to the legal rules 2) and 3) mentioned above [Memorandum, §27], thus the disputed applicable law is the legal rule 1) *supra*.

28. Furthermore, "it is by now firmly established that more than one national system of law may bear upon an international arbitration. Thus, there is the proper law, which regulates the substantive rights and duties of the parties to the contract from which the dispute has arisen. Exceptionally, this may differ from the national law governing the interpretation of the

agreement to submit the dispute to arbitration. Less exceptionally it may also differ from the national law which the parties have expressly or by implication selected to govern the relationship between themselves and the arbitrator in the conduct of the arbitration: the "curial law" of the arbitration, as it is often called."[*Channel Tunnel Group Ltd. v Balfour Beatty Construction Ltd.*]

29. Likewise, it is common practice for an international arbitration to have several legal systems and laws. In the case at hand, the Parties are form different countries and therefore different legal systems, reason why arbitration was opted as a conflict resolution mechanism instead of the courts of either country.

30. That said, when the arbitral clause does not state the applicable law, it is widely accepted to assume that they intended for it to be the same as for the law governing the subtractive contract, as for "where the substantive contract contains an express choice of law, but the agreement to arbitrate contains no separate express choice of law, the latter agreement will normally be governed by the body of law expressly chosen to govern the substantive contract" [*Sonatrach Petroleum Corp v Ferrel International Ltd*.]. Furthermore, "Where the laws diverge at all, one will find in most instances that the law governing the continuous agreement (the arbitration agreement) is the same as the substantive law of the contract in which it is embodied" [*Black Clawson v. Papierwerke*].

31. *In casu*, and as mentioned before [Memorandum §22], the Contract stated an applicable law whilst the Arbitration Clause did not specify an applicable law, nor did it expressly differentiate the applicable law or sever itself from the rest of the Contract and the applicable law to such Contract, therefore it can be reasonably understood and interpreted as governed by the same law as the Contract, *ergo* the law of Meditarraneo.

32. Nonetheless, although RESPONDENT might invoke the principle of separability, which means that an arbitration clause and the main contract this principle is not sufficient to diversify it from the negotiated and agreed law by the parties to the contract and all of its clauses (emphasis added). If one or both of the parties had in mind a specific applicable law for the arbitration clause, they would have expressly stated so in it.

33. Moreover, the separable nature of an arbitration agreement to the underlying contract does allow it to "be governed by a different national law than that applicable to the underlying

contract" [Born, p. 43, §2], but this may only be so "either by the parties' express choice of law or by the application of conflict of laws rules" [ibid.] In the case at hand, there was no express choice of law in the arbitration clause agreed by the Parties, as mentioned above, and CLAIMANT has addressed the considerations deriving from the conflict of laws rules applicable to both the parties and the seat of arbitration; it is now that CLAIMANT reinforces that the applicable law to the Arbitration Agreement is the designated law applicable to the underlying contract, *i.e*. the law of Mediterraneo.

III. THE ARBITRAL TRIBUNAL HAS THE POWER TO ADAPT THE CONTRACT

a. THE PARTIES INTENDED TO ALLOW ARBITRATORS TO ADAPT THE CONTRACT.

34. As referred in the preceding lines [Memorandum, §12], the parties agreed on submitting any dispute arising from the Contract to an arbitral procedure under equal basis, establishing the scope of action of the arbitrators under broad terms, specifically regarding the faculty given to arbitrators to adapt the Contract.

35. Also, Clause 12 of the contract stipulates that before the conclusion of the contract, if any extraordinary event would arise, the seller shall be responsible for hardship, which in this case, refers to the possibility of the obligations of the RESPONDENT becoming more onerous. In contractual terms, the problem resides on the faculty given to the arbitrators to adapt the contract, which is guided in essence, to maintain the equilibrium of the contract. Therefore, it befits a crucial matter to determine that RESPONDENT is obliged to pay the additional tariff [Castagno v. Church].

36. In addition, both parties consented on entering in such Contract willingly. According to the Black´s Law Dictionary, a contract is: "an agreement by which one person obligates himself to another to give, to do or permit, or not to do something expressed or implied by such agreement". In the present case, the parties obliged to one another through the Contract with the purpose of obtaining a personal benefit; in consequence, the parties must attend to what each compelled to conserve the essence of the contract.

37. Furthermore, it comes to relevance to mention that the core of a contractual interpretation is based on the determination of the parties [Alpa, pp. 65-94], which primarily consists on empirical facts and not an issue of law; therefore, it is necessary to strive for a balance of both subjective and objective interpretation of the contract [Gordon, p. 371].

38. In first instance, it comes to great relevance to mention the subjective approach to the contract, meaning the intention of the parties; which is the ultimate aim of contract interpretation [Rosengren, pp. 1-16].

39. As shown within Clauses 5; 6; 9; 10; and 12 of the contract, the obligations of RESPONDENT consist in the following: i) the fees are payable upon execution, ii) the payment of the purchased price within two installments, iii) the payment of all fees for the subsequent registration of foals conceived, iv) all tank rental and handling fees and; v) RESPONDENT is responsible for hardship or comparable unforeseen events.

40. Whereas, Clause 8 is the only specified obligation towards CLAIMANT, which resided in sending the shipment of the cargo in three installments. Therefore, CLAIMANT was not obligated in any way to withstand the responsibility of paying an additional fee, since its only responsibility consisted in the delivery of the goods within the dates established in the contract. Also, as shown within the facts [CLAIMANT´s EXHIBIT C4], despite that the fact that CLAIMANT agreed to the costs associated with a DDP delivery, it is duly noted that the increase in price by 1000 USD per dose was included in the obligations of the RESPONDENT, in addition to its obligations [Memorandum, §39].

41. Also, Clauses 14 and 15 establish that the contract will be governed by the law of Mediterraneo, including the United Nations Convention on Contracts for the International Sale of Goods (CISG) and; vii) under an extraordinary event the parties leave, to the discretion of the arbitrators, to decide accordingly, taking into account the common intention of parties and the equilibrium of the contract.

42. In relation to the objective interpretation, the exterior components are also essential factors that lead to a precise understanding of the contract, which correspond to various external key necessary aspects to unveil the true nature of the intention of the parties, such as: i) the nature of the contract and; ii) the context in which the intention of the parties was manifested [Vogenauer, pp 4].

43. Considering the present contract is of an international commercial nature, its interpretation cannot be bound by inadequate norms, but rather by international-uniform laws that do not contradict one from the other. In a contract of such nature, the framework of laws applicable has to be limited to those that recognize the contract as a single element. Therefore, any law

that opposes the other applicable laws and the very nature of the contract, cannot be applied on that particular case, since it would oppose: i) the laws applicable to the contract stipulated by the parties, ii) the validation of the contract, which represents the common intention of the will of the parties and; iii) the execution of the contract, thus affecting, in essence, the international commercial system itself.

44. Likewise, it is relevant to mention the context in which the contract was celebrated. Due to the accumulating losses since 2014 of CLAIMANT, its economic status had diminished, mainly as a result of a financial plan acquired for new stables in 2013 [PO2, §29]. Nonetheless, CLAIMANT created a profit plan along with new negotiations based on the predicted revenues obtained from the contract. However, this profit plan relies on the imbursement of the additional tariff of 1.250.000 USD, else, CLAIMANT would run through serious financial complications. On the other hand, RESPONDANT agreed (in essence) to pay all fees corresponding to the contract and, above all, would not go through economic difficulties if obliged to withstand the payment of the additional tariff.

b. ADAPTATION OF THE CONTRACT IS REQUIRED TO MAINTAIN THE EQUILIBRIUM OF THE CONTRACT.

45. Furthermore, it is of due relevance to mention that one of the guiding elements for the validity of the contract resides in its equity which, in the present instance, is at dispute. As mentioned on preceding lines, a contract is the result of the common intention of the parties; however, this common intention cannot be limited by its reference to contractual terms, but also has to be amplified to a dynamic sense as to maintain the contractual equilibrium [Faruque, pp. 85-112.]. The interpreters, in this case the arbitrators, must search for what the common intention of the contracting parties was.

46. This power is assumed by the arbitrators according to the arbitration clause of the contract (Clause 15), which conveys both the faculty and the responsibility to maintain such equilibrium, with the purpose of producing a result that is equitable and just, with the object of preventing any party from being obliged to a greater extent than they had intended [Rappis, pp. 215-236]. Therefore, since arbitrators have the ability to create, modify and interpret the terms of a contract [Goldstein, 69-76.], they have the responsibility of adapting the contract in

contrast to the context in which the parties obliged with one another to maintain its equilibrium. [Tampieri, 556].

c. THE LAW OF DANUBIA REGARDING ITS INTERPRETATION CONTRADICTS THE NATURE OF THE CONTRACT

47. Furthermore, the Danubian Law adhered for the interpretation of contracts (including arbitration agreements) to the four corners rule [PO2, §45]. According to the Black Law Dictionary, the four corners rule interpretation is known for limiting its reading to what is strictly written on the "four corners" of the contract and consequently, rejecting any aid or knowledge concerning the context in which it is made.

48. In the present case, the Danubian law conveys an internal contradiction with the law governing the Contract due to the uniformity reached by such law, which would result in and incongruent application, leading to the invalidity or avoidance of the contract. [Zeller, 251-264].

49. To consider the Danubian law as the law applicable to the interpretation of the contract would develop the following conflict: i) the invalidity of the contract, due to the contradiction derived between the four corners rule and the harmonized interpretation of the contract and consequently, affecting the execution of the contract and; ii) the prohibition of the arbitrators to act as according to their very nature, limiting their actions to very specific terms, which would result in an award based on broken principles.

50. On the other hand, the law of Mediterraneo is the one governing the Contract, therefore, applying the same law to its own interpretation would produce a congruent result with the intention of the parties, based primarily on the substance of such law [Hanotiau, p. 880]. It is coherent that the same law that governs such obligations binds the interpretation of the contractual obligations. Whereas, applying the Danubian law would produce a notorious incompatibility of norms, thus, its coexistence results impossible.

51. In addition, where a contract provision lends itself in to two interpretations, arbitrators must exclude the one that leads to unreasonable results which would produce an absurd result or one that no reasonable party would have accepted when entering the contract and adopt the construction that is reasonable, harmonizing the affected contract provisions [Convergent Wealth Advisors LLC v Lydian Holding Co.]. Thus, through an exclusion method, we

conclude that the Danubian law is not fit to the arbitral procedure, due to the fact that it contradicts the very nature of the execution of the contract.

CONCLUSION ON FIRST ISSUE

52. It is clear that even though CLAIMANT agreed to change the conflict resolution clause of the contract from the courts in Mediterraneo to arbitration, the Parties never agreed on changing the law of the Contract and of the arbitration clause contained in it. The absence of an express choice of law in the Arbitration Agreement does not imply a choice for the law of the seat of the arbitration. On the contrary it was not expressly specified in the Arbitration Agreement due to the express agreement for the law of Mediterraneo to govern the Contract as a whole, that includes the arbitration clause.

53. Likewise, resulting from the Clauses of the Contract, it is clear and unambiguous that both parties consented on celebrating a contract that permitted the possibility of becoming more onerous, and more specific, that the RESPONDENT consented a contract in which its obligations involve the payment of all fees related to the object of the contract, including those that were unforeseen. This possibility is firmly attached to the jurisdiction of the arbitrators, which was indorsed by the parties under Clause 15 of the contract, hence, setting the ground for the arbitrators to have the power to adapt the contract [Art. 13.5, Hong Kong International Arbitration] with the purpose of maintaining its equilibrium. For these reasons, the law applicable to the arbitral procedure corresponds to one, which permits the contract to withstand its own validity and execution, which would be the law of Mediterraneo.

54. Finally, the applicable law for the interpretation of the arbitration agreement is the law of Mediterraneo and this Arbitral Tribunal has the power to adapt the Contract, mainly because a specific performance of a contract is not a matter of right, but a question of equity, and application is addressed to sound legal discretion of the arbitrators, controlled by principles of equity and full consideration of the circumstances of the present case [In re Hayhurst's Estate].

SECOND ISSUE: CLAIMANT IS ENTITLED TO SUBMIT EVIDENCE FROM THE OTHER ARBITRATION PROCEEDINGS.

I. THE EVIDENCE OF ANOTHER ARBITRATION IS ADMISSIBLE UNDER ADEQUATE GROUNDS.

55. Before the arbitration takes place, CLAIMANT has been made aware of certain facts that could drastically affect the course of the arbitration. The facts were obtained at the annual breeder conference through Mr. Kieron Velazquez, the CEO of one of CLAIMANT's regular customers. Mr. Velazquez worked for RESPONDENT before May 30th, 2018 and therefore knew about another dispute, in which RESPONDENT claims that he should receive a compensation for tariffs brought upon them by the president of Mediterraneo. However, RESPONDENT submits that the evidence could only be obtained by a breach in the confidentiality agreements under the HKIAC 2013 rules and that the prevailing principles of transparency or the UNCITRAL Rules on Transparency are not applicable to this case; therefore, no documents should be allowed [Letter by Fasttrack, October the 3rd 2018].

56. Additionally, the submission of evidence, according to RESPONDENT, could only be possible through a hack of RESPONDENT's computer system or through one of two former employees; either way, according to RESPONDENT the evidence would have been obtained illegally and should therefore be inadmissible.

a. THE EVIDENCE IS ADMISSIBLE UNDER THE ADMINISTERED RULES OF HONG KONG INTERNATIONAL ARBITRATION CENTRE 2018.

57. RESPONDENT's claims about the evidence being inadmissible because of a breach in confidentiality according to article 42 of the 2013 HKIAC rules. However, as mentioned before, the rules that apply for these proceeding are the administered rules of the Hong Kong International Arbitration Centre 2018 according to [PO1], despite the fact that the notice of arbitration has been submitted with the previous rules (2013) of the HKIAC. Therefore, the submission of the evidence is in accordance to the HKIAC 2018 Rules and is admissible.

1) The arbitral tribunal must determine the admissibility of any evidence pursuant of article 22 of the HKIAC rules 2018

58. Before the Case-Management-Conference held on October 4th, CLAIMANT informed to the Arbitral Tribunal on October the 2nd [Letter by Langweiler] about the reliable information

received at the annual breeder conference, related to another arbitration in which RESPONDENT, acting as CLAIMANT, alleged the adaptation of the contract invoking an unforeseeable change of circumstances due to the tariff imposed of 25% by the president of Mediterraneo. This claim is directly contradicting the position of RESPONDENT, who in the present dispute is vigorously denying the need to adapt the contract because of an unforeseeable change in circumstances.

59. Article 22.2 of the HKIAC 2018 determines that the Arbitral Tribunal must decide the admissibility, relevance, materiality and weight of the evidence, including the application of strict rules of evidence. It is common practice in arbitration that exclusively the Arbitral Tribunal determines the admissibility of the evidence and decides whether to take the evidence in a pragmatic way. As Gary B. Born state that more often than not the Arbitral Tribunal has the discretion to determine how the evidence will be admitted as well as how it should be presented. [Born, p. 470].

60. Additionally, the UNCITRAL Arbitration Rules 2013, used as guiding principles in the present matter, provide in article 27, point 3:

> *3. 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.*

61. This article establishes that the arbitral tribunal indeed has the power to request the parties the submission of "documents, exhibits or other evidence" that may be useful in the decision-making process of the award. In this regard, the Arbitral Tribunal may require this type of information for determining the relevance of the evidence referring to the present case. The usefulness, materiality, importance and weight of the information obtained during the annual breeder conference (email sent by CLAIMANT on October 2nd, 2018 [Letter by Langweiler]) is implicit in the information itself, since the matter discussed in said arbitration is very much analogous to the matter presently in dispute.

62. After considering the previous points, it is made clear that the arbitral tribunal has jurisdiction over the admissibility of the evidence since i) the 2018 HKIAC Rules in article 22 expressly state a duty for the Arbitral Tribunal to determine the admissibility of the evidence and ii)

UNCITRAL Arbitration Rules, used as a guiding principle, state the same duty in article 27, point 3.

2) The parties did not agree upon the rules of evidence in the arbitration agreement

63. Neither party agreed nor sought to apply strict rules of evidence in the arbitration agreement, which, in turn, conferred the power to determine the admission of the evidence to the Arbitral Tribunal under the HKIAC rules 2018. Should RESPONDENT have wanted a certain level of confidentiality in regard to the information that can be used in the arbitration procedure, they could have made it explicit when the negotiation of the contract was still in process. As Born indicates, the parties usually agree upon the process in which the evidence will be received and presented [Born, p. 470]. Following the same line of thought, if RESPONDENT was worried about certain evidence being used they could have expressed their desire to have it so. However, there is no instance in which RESPONDENT expressed the desire to apply strict rules of evidence should there be a conflict between the parties.

64. Since RESPONDENT invoked only one article regarding the confidentiality in its previous arbitration, it is safe to assume that there was no express confidentiality clause in the arbitral tribunal or in any other of the laws governing the contract, the arbitration or the award. Furthermore, if the only existent clause regarding confidentiality in RESPONDENT's previous arbitration is article 42 of the 2013 HKIAC Rules, then it is implied that there was no explicit clause regarding the confidentiality of the substance of the arbitration. In *Plowman*, Australia's High Court determined that should a party want the substance of an arbitration to be protected under a confidentiality clause, then it should be expressly stated. For RESPONDENT to claim that there was a breach in contractual and statutory confidentiality obligations it should have proven that there was an express duty of confidentiality in either the arbitral clause or the contract [Esso Australian Resources v Plowman]. Additionally, in the *Bulbank* case the Swedish Supreme Court establishes that unless the parties have agreed upon a confidentiality agreement undertaking specifically, neither party can be deemed bound by a confidentiality undertaking. [A.I. Trade Finance v Bulgarian Foreign Trade Bank]

65. It is clear RESPONDENT has failed to prove the existence of a confidentiality clause in the in the previous arbitration since, if it did exist, it would have been stated in the response to the

evidence submitted by CLAIMANT [letter by Fasttrack, October 3rd, 2018] which is part of the current arbitration process.

3) Though 2013 HKIAC rules are not applicable in the present dispute, article 42 is also not applicable to the source from which CLAIMANT obtained the information

66. RESPONDENT has expressed in [Letter by Fasttrack] that in the other arbitration, which was conducted under 2013 HKIAC rules, article 42 of said rules provided a confidentiality clause which was breached and allowed CLAIMANT to obtain the information. However, though RESPONDENT has summoned article 42, Mr. Velazquez, the source of the information, does not fall under any of the assumptions of said article. Article 42 states that:

> *"42.1 Unless otherwise agreed by the parties, no party may publish, disclose or communicate any information relating to: (a) the arbitration under the arbitration agreement(s); or (b) an award made in the arbitration. 42.2 The provisions of Article 42.1 also apply to the arbitral tribunal, any Emergency Arbitrator appointed in accordance with Schedule 4, expert, witness, secretary of the arbitral tribunal and HKIAC."*

67. Mr. Velazquez was not and has never been related to the arbitration itself; he does not qualify as a party since he did not directly participate in the arbitration. He also does not qualify as an arbiter, an emergency arbiter, an expert, a witness or a secretary of the arbitral tribunal. Additionally, there was no disclosure of the award, since there has been only a partial award emitted by the tribunal, making it impossible to discuss said matter. Therefore, the article in question is not applicable to the evidence in dispute i) because the source, Mr. Velazquez, does not fit the description provided in the 2013 HKIAC Rules and ii) because in providing information, Mr. Velazquez did not disclose the award since it has not been given, but rather discussed the general subject and the claims provided in the arbitration.

4) Other international arbitration rules also include confidentiality clauses for the parties, arbitrators, experts and other tribunal-appointed subjects, but not for unrelated parties

68. Though other international arbitration rules are neither applicable nor binding, their rules can serve as guiding principles for the arbitral tribunal to decide what should be done about the evidence.

69. Several other international arbitration rules, such as the Swiss Rules of International Arbitration [Art. 43, Swiss Rules of International Arbitration], the China International Economic and Trade Arbitration Commission [Art. 36, China International Economic and Trade Arbitration Commission], the International Arbitration Rules of the American Arbitration Association [Art. 34, International Arbitration Rules of the American Arbitration Association] and the JAMS International Arbitration Rules [Art. 17, JAMS International Arbitration Rules] protect confidentiality of the arbitrations regarding the arbitrators, the parties and the experts consulted. Under their provisions, there is no express clause as to the confidentiality of third parties unrelated to the arbitration. These rules are in line with the idea that confidentiality regarding third parties is regulated very loosely and often is not regulated at all.

70. Others, such as de UNCITRAL Model Law on International Commercial Arbitration, have no express article that regulates confidentiality, implicitly giving the power to regulate confidentiality to the parties and, as a last resort, to the arbitrators.

5) National court rulings regarding confidentiality claim that even in private arbitrations there is no absolute confidentiality

71. Several countries with the same legal tradition as Danubia (Common Law) have reached the conclusion that, even though private arbitrations protect specific information, confidentiality in these arbitrations is neither absolute nor implicit.

72. In *Bulbank*, the Swedish Supreme Court held that neither Swedish Law nor UN-ECE forced the tribunal to keep the information confidential, even in a private arbitration. The Australian High Court achieved the same conclusion in *Plowman*, where they held that, since absolute confidentiality is non-existent in Australia and because of it private arbitrations do not implicitly make the information or the documents confidential. Accordingly, Mayank states that "private arbitration hearings do not clothe the disclosed information or documents with confidentiality" [Mayank]. Though the principles applied in said arbitrations are non-binding,

they serve as guiding principles by arriving at the conclusion that confidentiality is not absolute. Furthermore, in the same case, the High Court determined that if any of the parties needed to secure the confidentiality of the arbitration, then they would need to do so expressly. In the present case, however, RESPONDENT did not make an express statement neither in the arbitration agreement nor did the rules applicable contain such a clause. Furthermore, since RESPONDENT relied solely on article 42 of the 2013 HKIAC Rules, they failed to establish a compelling basis for the confidentiality of the other arbitration.

B. THE SUBMISSION OF EVIDENCE IS IN LINE WITH THE PREVAILING PRINCIPLES OF TRANSPARENCY AS NOW EVIDENCED IN THE TRANSPARENCY RULES OF UNCITRAL.

73. It is to be noted that UNCITRAL Model Law on International Commercial Arbitration has no express regulation as to the transparency of international arbitrations. This does not constitute an argument for an implicit duty of confidentiality; rather, it should be implied that since there is no other legal measure as to the confidentiality between the parties the Arbitral Tribunal is competent to determine if evidence is admissible or not due to a possible infringement of this principle. Furthermore, the tribunal is competent to determine whether the evidence presented is relevant to the case and whether the evidence is material to reach an award.

74. Though the Transparency Rules of UNCITRAL are designed especially for Treaty-based Investor-State Arbitration, some of its principles can help clarify what should be done in cases where confidentiality is in dispute. Such a principle is article 4, point 3, which states:

> *"In determining whether to allow such a submission, the arbitral tribunal shall take into consideration, among other factors it determines to be relevant:*
>
> *(a) Whether the third person has a significant interest in the arbitral proceedings; and*
>
> *(b) The extent to which the submission would assist the arbitral tribunal in the determination of a factual or legal issue related to the arbitral proceedings by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties."*

75. Indent (a), on one hand, can be answered simply as: though Mr. Kieron Velazquez is a former employee of RESPONDENT and a frequent customer of CLAIMANT, he has no interest

whatsoever as to the decision of the arbitral tribunal. Therefore, the evidence presented by Mr. Velazquez is in no way tainted or submitted with malicious intent. As to indent (b), considering that the arbitral case presented [Letter by Langweiler, October the 2nd 2018] is very similar to the one being dealt with, the submission of the evidence (or lack thereof) would greatly impact the determination of the issue at hand. It is then evident that the tribunal is allowed to decide whether to accept the evidence or not, but rather it should accept the evidence because of the consequences the evidence might have in the decision of the award. These two points can help determine that, in fact, the evidence is admissible in this dispute.

II. THE EVIDENCE FROM THE OTHER ARBITRATION PROCEEDINGS WAS RIGHTFULLY OBTAINED.

76. Another issue regarding the evidence is the fact that RESPONDENT claims that the documents could only be obtained through two of their former employees or through a hack in RESPONDENT's computer system; either way, the only way to provide these documents would be through an illegal source and should therefore not be admitted in the arbitration. However, the documents regarding the arbitration have not been submitted, and their nature is therefore unknown. Even if the documents were obtained illegally in the first place, neither CLAIMANT nor the source from which he was to obtain the evidence has any relationship whatsoever to the illegal nature of these documents. In both cases, the evidence was obtained rightfully as far as CLAIMANT is concerned and he should not be held accountable for misconducts or mistakes that were made by other parties. The evidence is therefore not illegal, and CLAIMANT should not suffer the consequences of the wrongdoing of others.

a. THE EVIDENCE IS ADMISSIBLE UNDER THE EXCEPTIONS OF THE FRUIT OF THE POISONOUS TREE DOCTRINE

77. Despite the above-mentioned facts, the exclusionary rule or Fruit of the Poisonous Tree Doctrine might come to mind. This doctrine came into effect after 1920 in *Silverthorne Lumber Co. v. United States* but has since been modified to include certain exceptions. One such exception is the Independent Source doctrine, which protects evidence submitted by sources that are not related to the illegal nature of the evidence. The intention of this exception is to deny the causality nexus between the evidence and the illegal way it was obtained.

78. The United States Supreme Court explained this particular exception as follows: "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all. *Of course this does not mean that the facts thus obtained become sacred and inaccessible*. If knowledge of them is gained from an independent source they may be proved like any others..." [*Wong Sun v. United States*] The matter in question fits the very description Mr. Justice Holmes is giving of the evidence. In this case, CLAIMANT obtained evidence that, according to RESPONDENT, was disclosed by a breach of confidentiality or by a hack of RESPONDENT's computer system, therefore making it illegal. However, even if that were the case, this information was to be provided by either Mr. Kieron Velazquez or by another company, both of which were unrelated to any illegal obtaining of the evidence. These facts provide that the evidence in dispute "may be proved like any others". Additionally, in Wong Sun it was stated that in order to apply the independent source exception to the exclusionary rule, "if the evidence is not obtained directly from the violation, it is freed from the initial taint of the violation". The company from which CLAIMANT is to obtain the evidence cannot be held accountable neither from the illegal hacking of RESPONDENT's computer system nor from the breach in confidentiality from the two former employees.

CONCLUSION ON SECOND ISSUE

79. It is clear then that i) it is of the competence and within the power of the arbitral tribunal and the arbitral tribunal alone to decide upon the admissibility, relevance, materiality and weight of the evidence, including whether to apply strict rules of evidence, as made clear by the HKIAC rules 2018 (article 22.2), the UNCITRAL arbitration rules and the doctrine; ii) that RESPONDENT did not expressly state the desire to apply strict rules of evidence even though they had the opportunity to do so in several instances; iii) The article summoned by RESPONDENT (article 42) of the HKIAC rules, is not applicable to the source of the spoken information; iv) There are both national and international arbitration rules that are ambiguous as to the confidentiality of arbitral tribunals concerning third parties, therefore leaving the decision of whether to admit the evidence to the arbitral tribunal; v) UNCITRAL Transparency Rules can help guide the arbitrators as to what they should do with the evidence as well as their responsibilities in the matter; vi) Neither CLAIMANT nor any of its sources

that could provide the documents can be linked to the illegal way the evidence was obtained, and therefore should not be punished for another party's wrongdoing.

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

80. CLAIMANT may, under CISG and the main contract's clauses, claim the extra costs emerged from the 30 per cent tariff unexpectedly imposed by the Equatoriana's government, which represent a 25 per cent loss for CLAIMANT since it had calculated a five per cent profit margin for the transaction [PO2, #31]. However, a 25 per cent loss amounts to a strong sum that CLAIMANT is may not undergo nor endure due to the main contract's clauses — specifically the hardship clause—(I) and CISG's stipulations (II).

I. RESPONDENT IS DUE TO PAY THE EXTRA 25 PER CENT OF THE THIRD DELIVERY'S WORTH UNDER THE FROZEN SEMEN SALES AGREEMENT

81. According to the contract's settlements, RESPONDENT is obligated to pay for any arising cost due to the contractual clauses (1), especially clause 12, which addresses unexpected events that make the contract more onerous and states the buyer is to pay for those (2).

a. RESPONDENT MUST PAY ANY FEE ARISING DUE TO THE CONTRACT

82. RESPONDENT wanted to modify the price and delivery terms proposed by CLAIMANT, which were not accepted because CLAIMANT was only willing to assume a limited risk. RESPONDENT did not delved into the matter nor insisted on negotiating CLAIMANT's terms. "In the absence of an express rejection the statements by, or the conduct of, the offeree must in any event be such as to justify the belief of the offeror that the offeree has no intention of accepting the offer." [Official Comments UNIDROIT PRINCIPLES 2.1.5]

83. RESPONDENT never "responded nor objected without undue delay and therefore is bounded by the settlement agreement" [Högsta Domstolen NJA 2006 s.638]. Furthermore, the contract points out that RESPONDENT understands all fees have to be paid [SA, 5]. The word "fee" should be understood as the "money paid for a special transaction" [Oxford dictionary 1.1]. In this way, the agreement reached by parties does not distinguish from the additional costs associated with DDP delivery and the price for the goods [PO2. § 8]. The US$100,000 non-refundable payment per insemination dose made by RESPONDENT was supposed to cover

the outlay assumed by CLAIMANT for the DDP and everything the transportation spans. However, RESPONDENT is still obliged to pay for the additional tariff imposed by Equatoriana's Government as the agreed terms of parties allocation costs and risk pursuant the delivery stipulated.

i. DDP delivery was assumed by CLAIMANT merely due to its experience in the transportation of frozen semen

84. Since there have not been any objections by RESPONDENT after the mail dated on 31 March 2017 [Exhibit C4], it is understood the DDP delivery modification and the allocation of risk was settled, actually in the following discussions parties focused on the inclusion of a hardship clause [Answer, p. 30 §4]. In this way, RESPONDENT behavior denotes acceptance of the reached terms [UNIDROIT principles art. 2.1.6]. Under DDP delivery the seller is supposed to bear all costs and risks that taking the goods to the place of destination, to pay any duty for both export and import and carry out all customs formalities encompass [ICC INCOTERMS GUIDE 2010, p. 69], but DDP contemplates an exemption that matches with the same provisions of the contract: "any VAT or taxes payable upon import shall be cover by the seller unless both parties expressly agree otherwise in the sale contract." [ICC INCOTERMS GUIDE 2010, p.69].

85. Moreover, Clause 10 of the contract establishes that RESPONDENT has to pay all the fees associated with the delivery as it is explicitly said it is "responsible for all tank rentals and handling fees associated with delivery of the semen from the storage facility" [SA, 10]. The Arbitral Tribunal should take into account that the sales contract shows how both, CLAIMANT and RESPONDENT, agreed for the buyer to bear all costs pursuant to the "customs formalities necessary for export and import as well as duties, taxes and other charges payable upon export and import of the goods" [ICC INCOTERMS GUIDE 2010, A6 Allocation of cost].

1. *RESPONDENT must pay fees associated with the delivery of the frozen semen and additional costs that emerge from unforeseeable events to maintain the equilibrium thereof*

86. The trade delivery terms reached and the provisions explained in the contract are consistent with the main reason of the delivery which was only to leverage CLAIMANT's experience in shipment of frozen semen and limit the risk for CLAIMANT; in this way "the parties are bound by any usage to which they have agreed and by any practices which they have established between themselves" [UNIDROIT principles 1.9], which can be explained and summarized in a general principle of law*: pacta sunt servada*.

87. As is stated in clause 5 of the Contract: "All fees are payable upon execution of the contract" and in clause 10: "Buyer is responsible for all tank rental and handling fees associated with delivery of the semen from the storage facility and return of the shipping container."

88. Clause 5 and 10 of the Contract show that the parties agreed on certain usages between them. Consequently, the payment of the fees that RESPONDENT made it for the installments is also an implied obligation [UNIDROIT Principles 5.1.2 (b)] resulting from the usage the parties have agreed on their contract where it is stated expressly [UNIDROIT principles 5.1.1]. Now, in order to comply with the implied obligations agreed by RESPONDENT, this Arbitral Tribunal should observe the Parties practices established between them as a source of implied obligations [Ofelia Valenzuela Fernándes v. Paraguay Granos y Alimentos S.A].

89. It is essential to remember that the governing law is Mediterraneo's which does NOT recognize the four corner rule since it follows closely the UNIDROIT Principles. In those it is stipulated that "practices established between parties and conduct subsequent to the conclusion of the contract relevant particularly in interpretation of long-term contracts" [UNIDROIT Principles 4.3] which means that conducts that take place after the conclusion of the contract may influence (and influence indeed) on how the contract is interpreted. It must be remember that, in a first moment, the intention of the parties was to build a long-term business relationship and so the contract was written in such a way that it settled the basis for this to be so, it does affect the interpretation because in long-term relationships and contracts needs, circumstances and plans. The changed circumstances and therefore adaptations and new interpretations are required. [Official Comments UNIDROIT Principles 4.3]. The deal was

concluded with both parties agreeing on every term and condition. As followed by industries' practices: payment is acceptance [Clause 5 of the Contract]. Proof of this is the first payment. If RESPONDENT had not been comfortable with the agreement, they would have not continued with the deal. They accepted the terms (more specifically the hardship clause) having faith there would be no problem they had to respond to. It is not acceptable that now they have to face the responsibility they committed themselves to, they deny it. [Official comments UNIROIT Principles 1.6]. After the tariff had taken effect, CLAIMANT called RESPONDENT and discussed the new price increased and "got the impression that it had accepted to bear the bulk of additional costs" [CLAIMANT´s Exhibit C8]. According to the negotiations and the terms of the contract, the tariff falls within the scope of the clause 12, that states as follows: "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." The responsibility falls back into RESPONDENT due to a *contrario sensu* interpretation; since CLAIMANT is not obliged to pay for the arising costs, RESPONDENT is.

90. In conclusion, RESPONDENT is committed to the terms stated expressly in the contract [UNIDROIT principles 5.1.1] as well as the modifications on the DDP, the conduct that has been performing along the execution of the contract, and the practices parties have established between themselves, therefore cannot act inconsistently with an understanding that caused by his performance [Official comments UNIDROIT principles 1.8]. Actually doing it is found contradictory and inconsistent with the principle of good faith in contract performance [Arbitral Award 173/2011].

b. CLAUSE 12 OF THE CONTRACT FORESEES ALL HARDSHIPS TO BE ASSUMED BY RESPONDENT

91. Despite CLAIMANT's suggestion to use the ICC-2003 hardship model clause, RESPONDENT rejected to adopt it considering its scope to be too broad. In this way parties agreed on the inclusion of a narrow hardship clause. The principles of party autonomy and sanctity of contracts together constitutes the core pillar of transnational contract law, same that comes to embody the main law adopted by the parties. [Zaccaria, p.135]

92. In international contract practice, the term "hardship refers to a change of factors of political, economic, financial, legal or technological matter" [Bernini, p.193], which was unforeseen by either party at the time of the conclusion of the contract, resulting in an alteration of the equilibrium of the contract, making it excessively burdensome and/or extremely disproportional for one party. [Brunner, p. 392]

93. Thus, parties have agreed on a hardship clause that foresees events comparable to the health and safety requirements; and in this way the imposed tariff complies with the wording of a comparable event because Equatoriana's government, without any sort of previous notification or foreshadowing, imposed them.

2. Due to changed circumstances, the equilibrium of the contract has been disturbed.

94. Frequently, the party suffering the occurrence of hardship is entitled to request the renegotiation with a view of the equilibrium of the contract. Likewise, it should be highlighted that the impossibility of performance is not required to find hardship [Da Silveira, p. 323]

95. It comes to great relevance to mention that the decisive reason for CLAIMANT to conclude the contract was the specific circumstances, given the fact that this resulted in a 5% profit for this party [PO2, §31]. It is clear that the conclusion would have not taken place if the circumstances made such profit impossible to occur, which is why clause 12 was stipulated.

96. In consequence, if good faith of the contract prevails —which must always prevail— the counterpart must not try to make any illegal and unfunded allegations [RESPONDENT´s exhibit R3] trying not to make this clause applicable. Arbitrator must take these unforeseen circumstances into consideration, specifically because of the existence of clause 12. On the contrary, to ignore the upheaval of the economic equilibrium of the contract brought by this supervening circumstances (which can without doubt be considered a fundamental disruption of the contractual balance) would result in a direct violation of the principle of "good faith and fair dealing which is implied in each contract follow that in a case in which the circumstances to a contract undergo […] fundamental changes in a unforeseeable way. A party is precluded from invoking the binding effect of the contract" [Islamic Republic of Iran vs. Cubic Defense Systems, Inc.]. So given that the undersigned sent out the cargo on January 23th of 2018, paying the additional tariff; relying on the other party to comply with its aim of the agreement, consistent in the purchase price, agreed to be paid in two installments. Further, "the idea of

changed circumstances that affects the binding force of the contract is to be understood under *maxim clausula rebuc sic stnatibus*: the contract remains binding provided that things remain unchanged." [Islamic Republic of Iran vs. Cubic Defense Systems, Inc.]

97. Due to this variation in the contractual equilibrium and under clause 12 of the contract where it is stipulated that the seller is NOT responsible for hardship CLAIMANT is entitled to ask for an adaptation of the contract so that the additional amount that it payed and was not obligated to pay can be refunded.

II. HARDSHIP FALLS WITHIN THE SCOPE OF CISG

98. After the tariffs were imposed by Equatorianan government, the contract it has entered into a disequilibrium due to the changed of circumstances, this has resulted a disadvantage for CLAIMANT with respect the USD $125,000 paid per doses which has only covered USD$200 of transportation cost and DDP delivery. Hardship is typically used to "characterize all situations in which a dramatic change in circumstances leads to a fundamental disruption of the contractual balance, status of hardship involves situations in which performance has become radically more onerous or less profitable for a party." [Da Silveira, p. 322], in consequence, "under the general contract principles, the occurence of hardship "entitles the aggrieved party request to renegotiation looking forward to adapt the contract or terminate it." [Brunner, p.479] but if there is no success during negotitations, as ocurred in this case during negotiations with RESPONDENT´s CEO [Claimant's Exhibit C8], CLAIMANT is entitled to request the Arbitral Tribunal adapt the contract "as an ordinary remedy in case of changed circumstances"[Brunner, p.490].

99. The wording used under CIGS´s article 79 "impediment" is used as a neutral term indented to mask over the differences among the national excuse doctrines and may be best read as lying between the more strict and more liberal national excuse doctrines, which range between strict impossibility to mere hardship."[DiMatteo, p. 275]. Actually, France´s Cours de Cassation noticed this recently, and has "avoided the difficulty of recognition of hardship under the Convention, in the case of a fundamental imbalance in the contract that might constitute a case of hardship" [CISG Digest 2016, p.375].

a. THE ARBITRAL TRIBUNAL SHOULD ADAPT THE CONTRACT UNDER ARTICLE 79 OF CISG

100. CLAIMANT has fulfilled its performance according to the contract, due to "as along as the contract is not terminated or adapted the aggrieved party is not released forms its performance obligations"[Brunner, p.487], now that renegotiation turns out unsuccessful CLAIMANT its entitled to request to the adaptation of the contract due to its disadvantage position before RESPONDENT, since meets requirements under article 79 (1) of CISG which follows: "a party is not liable for a failure to perform any of its obligations if he 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."

101. In this way, the Arbitral Tribunal should adapt the contract given the tariffs imposed complied with the followed requirement under article 79 CISG: (a) The tariffs by Equatoriana government are beyond the control of CLAIMANT, were unexpected (b) also the measures taken affected directly the third frozen semen installment (c) which have changed the circumstances of the contract, consequently CLAIMANT is entitled to request the adaptation under CISG article 79.

i THE IMPOSITION OF TARIFFS BY EQUATORIANA IS BEYOND CLAIMANT'S CONTROL

102. The decision taken by Equatorianian government and the previous restriction imposed by the elected President of Mediterraneo resulted in a directly retaliatory measure that constituted an "act of government which are generally outside parties sphere of control." [Brunner, p.264], as a consequence "advocate an exemption under article 79 is possible in cases of quotas, export or import bans, rationing of goods, exchange controls, or trade bans" which constitutes the "cause for the failure to perform which lies outside beyond the control of the promisor" [Schwenzer, p.1067-1071]. Moreover prohibitions on export implemented by the seller´s States constituted an impediment beyond the control of the seller. [Case No.56/1995], similarly import bans would have the same effect.

(a) CLAIMANT is affected as resulted of the imposition of the tariffs

103. As a result of the changed circumstances, the contract is in disequilibrium, notwithstanding the price increase has been only a 30 per cent, CLAIMANT it is affected due to its financial situation, this sale it was supposed to be an small profit for the first time, due to

the losses that CLAIMANT has suffered since 2014, furthermore CLAIMANT wanted to split the revenues from it, between 2017 and 2018, in way to being profitable for the maintenance of the automatic prolongation of his credits lines.[PO2, §5-29].

104. Hence, the imposition of tariffs has clearly resulted an "impediment that has made a party´s performance a matter of economic hardship which the performing of the contract must involve an extraordinary and disproportionate burden under the circumstances" [CISG Digest 2016, p.374].

105. The 30 per cent increase of the delivery for the third installment should be enough to consider a contractual disequilibrium. CLAIMANT expected a total gain of USD$10,000,000 for both installments, but due to the 30 per cent increase, a USD$ 6,500,000 is the costs of the second installment, but CLAIMANT aware of the 5% margin profit, only required the payment of USD$1,250,000 that only covers the 25 percent of the tariff increase and not the total amount which is USD$ 1,500,000, however the $USD 5,000 margin profit contemplated per dose just represented a 0.33 per cent of the increase. As consequence of the payment of $USD1,2500,000 CLAIMANT's consequences would be the endangered of his restructuring plan and to be obliged to sell the dressage part of complaint to CLAIMANT´s largest competitor [PO2, 29] but regarding to long-terms or installment contracts there is no specific percentage to prove the disequilibrium of the contract due to "the time factor makes the long-term contracts vulnerable to change of technological, political, or economic circumstances or the omission of certain contract provisions." [Brunner p. 438].

(b) CLAIMANT did not expect the imposition of tariffs which increased the final installment

106. The temporarily lift of the ban was supported by powerful interests in Equatorianian, this business sector has grown in the last five years, this incentive RESPONDENT´s goal to become one of the leading breeders racehorses in Equatoriana and thereafter beyond this boundaries, is proof of that [CLAIMANT's Exhibit C3], also Equatorianan has always been a supporter of the existing system of free trade which it was impossible to think would imposed the tariffs even when has been affected has always tried disputes amicably. [CLAIMANT's exhibit C6]. Thus, governments decision was could not have been reasonably contemplated at

the time of the conclusion of the contract. [Macromex v. Globex] regarding the particular circumstances.

(c) Measures taken by Equatorianan government affected directly the third frozen installment

107. The retaliation measures taken by the Equatorianan government comply with the "objective circumstances preventing the fulfillment of the contractual obligations"[CLOUT 985/01], the tariff was imposed on selected products of Mediterraneo including on animal semen, something unusual because the racehorse semen it is treated differently from pig, sheep or cattle. According to the World Customs Organization the racehorse semen is not under the list of "ANIMAL ORIGINATED PRODUCTS; NOT ELSWHERE SPECIFIED OR INCLUDED" so as is the bovine semen under the Harmonized System Code, therefore the imposition of a tariff to the animal semen including the frozen semen of racehorse became unavoidable for CLAIMANT. On the contrary, where seller could reasonable avoided the ban by shipping to the alternative port proposed by the buyer [Macromex Srl v. Globex International Inc], in the present case, there is no alternative port appointed by the buyer according to the delivery terms agreed which makes it unavoidable, even so the goods were delivered, "which reflects the policy that a party who is under an obligation and may not await events which might latter justify his non-performance even if "avoiding or overcoming an impediment entails greater efforts and costs anticipated at the time of the conclusion of the contract implies business loss." [Da Silveira].

ii UNIDROIT PRINCIPLES COMPLEMENT ARTICLE 7 OF THE CISG

108. As a consequence of the long-term contractual relation established by the parties and the provision made pursuant the hardship, is needed to observe the international character of CISG and the importance of the uniformity of application [DiMatteo, p.26] before the local tribunals violate the application of the convention being inconsistently with the basic goal of this, international unification. [Honnold, 425].

109. According to the contract the parties agreed, that the governing law of the contract is the law of Mediterraneo, which is a verbatim of the UNIDROIT principles, and the application of the CISG well. In way, the UNIDROIT principles do not deal with hardship as an issue of validity, as would appears "in some other legal systems where hardship appears to be approached as an issue of validity" [Garro, §8.] the UNIDROIT principles notice when

hardship occurs in article 6.2.2, in order to CLAIMANT is entitled to require for performance under article 79 CISG, through the application of the article 7(2) "this is true in particular with regard to certain fact patterns: impossibility to perform, hardship, frustration." [HuberMullis, 193]. Therefore, is need to be treated as a "matter governed but not expressly settled by CISG, but must to be settled in conformity with the general principles in which is the CISG is based" [Case No. SCH-4366], furthermore "these general principles are contained and further developed" in the UNIDROIT principles and that only where the solution cannot be found in the UNIDROIT principles reference to the domestic law of the country in question was justified." [Case No.12460], hence as the law of Meditarraneo and the UNIDROIT Principles are the same, the provision made pursuant hardship under them, are valid and serve to interpret the article 79 under CISG on grounds of hardship.

110. Therefore hardship "is not a matter which expressly excluded from the scope of the convention by Art.4" [Nuova v. Fondmetal]. Further regarding this matters of hardship are exhaustively covered by CISG. [136/92]

iii THE HARDSHIP PROVISION INCLUDED IN CLAUSE 12 OF THE CONTRACT DOES NOT PRECLUDE THE APPLICATION OF CISG

111. The existence of the clause 12 in the contract does not exclude the application of article 79 of the CISG on the grounds of article 6 of the Convention; Parties can exclude the CISG by mutual agreement otherwise CISG applies ex officio as law in force [Schwenzer, 103]. The inclusion of the clause 12 does not mean neither an express exclusion in part of the CISG nor an implied one.

(a) Clause 12 does not derogate, replace or modify explicitly or impliedly the provisions founded on article 79 CISG

112. The law governing the contract is the Law of Mediterraneo and parties included CISG in the same clause, however "CISG preempts domestic law of the contract preventing not to frustrate the goals of uniformity and certainty embraced by the Convention [CLOUT 433] Now the inclusion of the hardship clause as level of substantive law do not derogate individual provisions of the Convention. In other words, "if the parties wish to exclude the CISG or particular provisions, their intention must be express and clear." [CLOUT 1405]. Even if RESPONDENT wanted to alleged the implied derogation of article 79 CISG regarding the

applicable law as the Law of Mediterraneo and the inclusion of the hardship clause on the contract "first the mere reference to the standard terms applicable to domestic sale does not imply an exclusion of CISG." [CLOUT 985/01], concerning the hardship clause, the provisions on the Convention cannot be relied upon because an express clause in the contract even more when this has been inspired by customs regulations or trade usages between the Parties [CLOUT 1305].

III. RESPONDENT MUST PAY USD$1,250,000 UNDER CISG AND THE UNIDROIT PRINCIPLES

113. CLAIMANT has delivered the last shipment on 23 January 2018, despite of the incompletely payment pursuant the third installment and the provision under the contract which states as follows: "All fees are payable upon execution of this Agreement. Buyer specifically agrees and understands that no semen will be shipped until all fees have been paid." [SA, 5].

114. Concerning the price reached in the contract and hardship, CLAIMANT is entitled to request the payment of $USD 1,250,000 under article 79 provisions and the UNIDROIT Principles.

1. RESPONDENT must pay due to the usages practiced by the parties under the contract.

115. Looking back under DDP delivery and hardship under contract, due to CLAIMANT was unwilling to bear all the additional cost that involves the DDP delivery, in particular not those associated with changes in customs regulations imports, therefore the hardship was included to address such subsequent changes [CLAIMANT´s exhibit C4], actually the direct additional costs associated with transportation and DDP delivery per dose resulted not enough because only covered $USD200. According to the terms agreed both parties are "bound by any usage they have agreed"[Article 9 CISG], in this way "if parties (in this case, RESPONDENT) do not wanted to be bound by the practices established between themselves, they need to expressly exclude them." [CISG DIGEST, p.63], further parties intention must to be interpreted with the relevant circumstances that involved it, as there is the practices established between the parties [UNIDROIT PRINCIPLES art. 4.3], the subsequently conduct of the parties after the conclusion of the contract can assist in determining what parties intended their

obligations to be, particularly in the context of long-term contracts [Official comments UNIDROIT Principles 4.3 (3)].

116. Nonetheless, RESPONDENT has consented by his own conduct [Art. 2.1.6 (3) UNIDROIT PRINCIPLES] the terms, at first sight the payment pursuant the first two installments and secondly, before the phone call held between Ms. Julie Napravnik and Mr. Shoemaker, besides create the impression of acceptance he told Ms. Napravnki they already initiated the payment of the second installment. [CLAIMANT´s exhibit C8], it would be wrong there is not established practice between parties as long as they were "in a long-lasting business relationship, involving a number or transactions." [Case No. 960-0013] pursuant to the Frozen Semen Sales Agreement.

117. RESPONDENT conduct has assented the term established between the parties, therefore RESPONDENT must to make the payment left of $USD 1,250,000.

2. RESPONDENT is obliged to make the payment under article 79 and other provisions of CISG

118. CLAIMANT delivered the shipment on 23 January 2018 the agreed day although it was owed difference of the last payment; which RESPONDENT assured.

119. CLAIMANTs performance were conduct in the light of good faith and fear dealing under the convention [Art.7 CISG] which was also implied after several drafts and the long-term relationship according to RESPONDENT intentions. Indeed under Article 7 of CISG "The party who invoques changed circumstances that fundamentally disturb the contractual balance is also entitled to Claim the renegotiation of the contract." [CISG DIGEST, p.45]. Nevertheless, those negotiations were stopped and refused to pay by RESPONDENT.

120. In this way when "buyer fails to perform any of his obligations under the contract or his convention the seller may exercise the rights provided in art. 79 of CISG.

(a) CLAIMANT is entitled to require the payment of USD $1,250,000 under article 79 of CISG

121. Regarding the economic hardship and consequently the adaptation of the contract through the article 6.2.3 (b) of UNIDROIT PRINCIPLES "as a trade usage in the sense of article 9(2)

of the CISG in order to reach the desirable result of adaptation" [Schewenzer] CLAIMANT is entitled to require the payment of USD $1,250,000.

122. According to the article 79 (4) CISG RESPONDENT must to give notice to the other party of the impediment and its effect of his ability to perform, notice which RESPONDENT omitted to make. RESPONDENT since the phone call date on 21 January 2018 held between Ms. Naprvanik and Mr. Shoemaker, created the impression to accept the additional costs due to the tariffs, indeed he promise a solution on basis of the long-term relationship. [CLAIMANT´s exhibit C8]. Moreover, RESPONDENT has counted with more than 30 days, since parties have been read in the Peak Business News about the retaliatory measures took by both governments until the day that the shipment goes out on 22 January 2018 [CLAIMANT´s exhibit C7], therefore since the date of enforcement of the tariffs 15 January 2018 has materialized the impediment, RESPONDENT must sent the notice even if the impediment remain unclear [Legal impediments, p.248], actually CLAIMANT has granted a reasonable time to RESPONDENT according to CISG article 63 (1), resulted from the notice given to RESPONDENT the mail dated on 20 January 2018 where the customs authorities apparently cover all animal products. [CLAIMANT´s exhibit C7], "the reasonability of length of the additional period is assessed according to the circumstances of the case, including commercial usages and practices established between the parties"[CISG DIGEST, p. 291], Furthermore, "CISG article 79 (5) without referring expressly to the question, whether the aggravated party may be nevertheless entitled to interest on the money that is owed to him, in addition to the obligation to pay monetary compensation for damages is to compensate the financial cost experienced for not receiving payment at the time is due. " [CISG-AC Opinion No.7, para. 5].

CONCLUSION ON THIRD ISSUE

123. The demand of payment of the extra 25 percent is within CLAIMANT's rights. It is being fair when asking only for a refund of the 25 per cent out of the 30 per cent tariff since it had a 5 per cent profit margin. It is entitled to the payment due to the hardship clause found in the main contract for it anticipates that unforeseeable events may emerge and confers the responsibility, as it has been proven in this memorandum, to RESPONDENT. Along with this, UNIDROIT Principles support these statements by recognizing that the conducts shown by the parties denote conformity with the contract (including clause 12) and by admitting that

Respondent's obligation of refunding what is being requested can con from a contrario sensu interpretation without any issue.

124. The changed circumstances during the execution of the contract are covered under article 79 of CISG, hence they meet the requirements established in this CISG provision. The import tariff has resulted in an unexpected and unavoidable impediment for CLAIMANT.

125. Resulting from the good faith of the long-term relationship established between the parties, they held negotiations in order to adapt the price to a fair amount for both. Nonetheless, the lack of willingness from RESPONDENT to carry its obligations, the negotiations have failed; ergo, CLAIMANT is entitled to obtain the payment of the additional amount of $1,250,000 due to the additional cost of the tariffs.

REQUEST FOR RELIEF

On the light of the former submissions, CLAIMANT respectfully requests that this Arbitral Tribunal:

1. Declares that it has the necessary jurisdiction and power to hear this case and adapt the Contract.
2. Orders RESPONDENT to pay the amount of USD $1,250,00 to CLAIMANT.
3. Declare CLAIMANT exempt of the costs incurred for the jurisdiction phase and include such costs in the separate cost award.

Vindobona, Danubia

December 6

(signed)
AILEEN WAGLEY

(signed)
ANA VERNON

(signed)
FERNANDO DEL REY

(signed)
GUILLERMO MADRIGAL

(signed)
PABLO RUEDA

Certificate and Choice of Forum

To be attached to each Memorandum

I, Aileen Wagley, on behalf of the Team for (name of School) Universidad Nacional Autónoma de México (UNAM) 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) Universidad Nacional Autónoma de México (UNAM)

Name Aileen Wagley

Signature