

**SIXTEENTH ANNUAL
WILLEM C. VIS EAST INTERNATIONAL COMMERCIAL ARBITRATION MOOT**

MEMORANDUM FOR CLAIMANT

On Behalf Of:

Phar Lap Allevamento
Rue Frankel 1
Capital City, Mediterraneo

CLAIMANT

Against:

Black Beauty Equestrian
2 Seabiscuit Drive
Oceanside, Equatoriana

RESPONDENT



CHULALONGKORN UNIVERSITY

**INTOUCH SIRIWALLOP · NAPATSORN PUREETHIP · PHOCHARAPHOL YINGAMPHOL
SIRINNAREE ONGSAKUL**

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STATUTES AND RULES

ABBREVIATION	CITATION	CITED IN
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<i>CISG</i>	United Nations Convention on the International Sale of Goods	¶ 17
<i>HKILAC Rules</i>	Hong Kong International Arbitration Centre Rules	¶ 48
<i>ICDR Rules</i>	International Centre for Dispute Resolution International Arbitration Rules	¶ 48

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Trib. 2005).

TABLES OF ABBREVIATIONS

<i>Ans.</i>	Answer
<i>Art.</i>	Article
<i>Arb.</i>	Arbitration
<i>CISG</i>	United Nations Convention on the International Sale of Goods
<i>Cl.</i>	Claimant
<i>Com.</i>	Commentary
<i>Ex.</i>	Exhibit
<i>HKLIAC</i>	Hong Kong International Arbitration Centre
<i>IBA</i>	International Bar Association
<i>ICC</i>	International Chamber of Commerce
<i>ICDR</i>	International Centre for Dispute Resolution
<i>Ltr.</i>	Letter
<i>Ord.</i>	Order
<i>Proc.</i>	Procedural
<i>Req.</i>	Request
<i>Resp.</i>	Respondent
<i>UNCITRAL</i>	United Nations Commission on International Trade Law
<i>UNIDROIT</i>	International Institute for the Unification of Private Law

STATEMENT OF FACTS

1. Respondent was building up its own racehorses breeding programme, with the intention to become a leading breeder for racehorses. On 21 March 2017, Respondent contacted Claimant for Nijinsky III's semen for the breeding since the ban on artificial insemination in Equatoriana was temporarily lifted. Respondent invited Claimant to make an offer for 100 doses of frozen semen of Nijinsky III, including its terms and conditions.
2. Claimant then replied on 24 March 2017 to Respondent, stating that Claimant does not normally sell frozen semen of its racehorses and not such an amount to a single breeder. However, Claimant decided to make an offer for 100 doses of frozen semen of Nijinsky III to Respondent under certain conditions. Such Claimant's decision was of taking Respondent's reputation for dressage and showjumping and to express Claimant's interest in entering into a long-term common beneficial relationship.
3. Certain conditions under which Claimant's offer was were as followed. The frozen semen would be provided in several instalments. The frozen semen shall not be re-sold to third Parties without Claimant's express written consent. Claimant further required that the use of every dose shall be informed to Claimant. The price was initially set at 99.50 USD per dose and the semen would be picked up at Claimant's premises.
4. On 28 March 2017, Respondent make an adaptation to the offer made by Claimant. Respondent insisted that it expected a better price. Moreover, Respondent demanded Claimant for delivery on the basis of DDP, provided that the delivery was urgent and that Claimant had much greater experience in the shipment of frozen semen. The rest of the offer made by Claimant was accepted by Respondent.
5. On 31 March 2017, Claimant accepted the DDP and asked Respondent for an increased price to 199.50 USD. Claimant further insisted that Claimant would not take over any further risks associated with such delivery terms, in particular not those associated with changes in customs regulation or import restrictions. Claimant had experienced unforeseeable additional health and safety requirements destroying the commercial basis of the deal. Claimant also required that hardship clause should be included in the contract.
6. Unfortunately, the two main negotiators of the Parties, Ms. Napravnik and Mr. Antley, were replaced in the negotiation due to an accident after the annual colt auction in Danubia on 12 April 2017. The contract was then finalized and signed on 6 May 2017.
7. The Equatorianian government, which had always been an ardent supporter of free trade, imposed 30 per cent tariffs on selected products from Mediterraneo including on animal semen. The measure was to retaliate the Mediterraneo government. During the moment

when the new tariffs regulations were effective, Claimant had already shipped two instalments of the frozen semen to Respondent. Another final instalment was still awaited. As a consequence, Claimant and Respondent were impacted from the custom regulations of Equatoriana that the final shipment which Claimant was obliged to Respondent was 30 per cent more expensive.

8. Claimant immediately contacted Respondent on 20 January 2018 for a solution regarding the impact on the delivery. Respondent then urged Claimant to authorize the final shipment before a future negotiation to find a solution, given that a timely delivery was extremely important. Relying on Respondent's promise that a solution would be found, Claimant authorized the final shipment on 23 January 2018 before the agreement on new price had been reached.
9. In response to the Claimant's general terms and conditions, Respondent replied in the email on 28 March 2017 that the application of the law of Mediterraneo shall be accepted on a condition that the courts of Equatoriana have jurisdiction. Claimant however refused to submit jurisdiction to the courts in Equatoriana, and suggested that Parties opt for arbitration in Mediterraneo instead.
10. Upon the discussions of the dispute resolution clause via email, Claimant accepted that the arbitration will be administered by Hong Kong International Arbitration Centre (HKIAC) under the HKIAC rules but requested for a change in the seat of arbitration to be Vindobona, Danubia instead of Equatoriana. In the same email on 11 April 2017, Claimant insisted that the law applicable to the sales contract remain the law of Mediterraneo.
11. Prior to the car accident, there was a discussion on 12 April 2017 referring that the express reference of contract adaptation should be added in the hardship clause or the arbitration clause. In particular, a discussion also mentioned that a task to adapt the contract shall belong to the arbitrators. Later on the car accident, the note of Mr. Antley was found in his negotiation file. It described the list of issues for further discussion with Ms. Napravnik. One of which read "Clarify in arbitration clause that neutral venue and applicable law". Eventually, the contract successors failed to include the contract adaptation clause and clarify the applicable in arbitration clause when finalizing the contract.
12. Claimant received reliable information about another arbitration that Respondent had with one of its customers concerning the sale of a promising mare to Mediterraneo. The facts and circumstance in the other arbitration are almost identical to the current arbitration as the sale was also affected by the unforeseen tariff of 25% imposed by Mediterraneo. The contract also provided for DDP delivery, contained Hardship clause and the Model

HKIAC-Arbitration Clause which provided for arbitration under the HKIAC Rules and Mediterraneo law as applicable law to the arbitration agreement. The only difference is that in the other arbitration Respondent was negatively affected by the tariff, as a result, Respondent, who in this present case strongly object the adaptation of the contract, asked for an adaption of the price under the Hardship Clause.

13. Therefore, Claimant requested to submit a copy of the award from the other arbitration as it shows a highly contradictory behavior of Respondent. However, Claimant is not yet has possession of said award, but is in the process of acquiring it from a company providing intelligence on the horseracing industry and will submit it as soon as possible.

SUMMARY OF ARGUMENT

PART 1: The law of Mediterraneo shall govern the arbitration agreement and the Tribunal has jurisdiction and the authority to adapt the contract

The law governing the arbitration shall be the arbitration law of Mediterraneo. Contrary to Respondent's assertion, the separability doctrine is irrelevant to the determination of the choice of law. The law of Mediterraneo is the implied choice of law for the arbitration agreement. Further, there is no explicit provision in the arbitration agreement that excludes the arbitrator's authority to adapt the contract. The claim regarding contract adaptation therefore falls within the scope of arbitration agreement. Hence, the Arbitral Tribunal has jurisdiction and authority to adapt the contract.

PART 2: Claimant is entitled to submit the evidence from the other arbitration as it is relevant to the case and material to its outcome

Although, the Parties entrust the Tribunal with wide discretion on the taking of evidence, the Tribunal shall conduct the proceedings in accordance with HKIAC Rules since they govern the procedure of this arbitration and adopt the IBA Rules as guidance. Contrary to Respondent's claim, Claimant is entitled to submit the evidence from the other arbitration even though the Award was, to some degree, illegally obtained since the Award is particularly relevant to the case and material to its outcome and Claimant has not been involved with the illegal obtainment. Even in the case that the evidence is confidential or was obtained through hacking, the Tribunal still retains its full discretion over the admissibility of the evidence. Furthermore, without the Award, Claimant will not be able to support its claim and Claimant will be deprived of its right to fair opportunity to be heard and present its case under the principles of natural justice.

PART 3: Claimant is entitled to the payment of US\$ 1,250,000 or any other amount resulting from an adaptation of the price

As the contract between the Parties is governed under CISG, the agreement shall be interpreted in accordance with CISG that Claimant's responsibility for the tariffs was explicitly excluded. Even if the Tribunal were to find that Claimant's responsibility for tariffs is included under the contract, the adaptation clause authorizes the Parties to adapt the contract. Also, Art. 29 of the CISG allows the modification of contract by the mere agreement of the Parties. Thus, the contract was modified, allowing Claimant to seek the payment as a result of the tariffs. Moreover, Art. 79 of CISG exempted Claimant's from its liability. While Art. 79 did not provide a direct solution, general principles on which the CISG is based can be invoked to provide Claimant with a relief through Art. 7(2). Additionally, the principle of *hardship* in the UNIDROIT provides Claimant with the rights to the payment.

**PART 1: THE LAW OF MEDITERRANEO SHALL GOVERN THE
ARBITRATION AGREEMENT AND THE ARBITRAL TRIBUNAL HAS
JURISDICTION AND THE AUTHORITY TO ADAPT THE CONTRACT**

1. Respondent claimed that the preceding choice of law clause did not govern the arbitration agreement considering the separability doctrine and Respondent's opposition to have the arbitration agreement governed by the law governing substantive contract. As opposed to the Mediterranean law, Respondent then anyhow insisted that the law of the seat of arbitration should be the governing law of the arbitration agreement. Hence, the question as to which law governs the arbitration clause along with its interpretation was raised.
2. Respondent additionally asserted that Claimant's claim in relation to the price adaptation was inadmissible since the Arbitral Tribunal lacked the jurisdiction and the empowerment regarding the authority to adapt the contract. However, contrary to Respondent's assertion, the law governing the arbitration agreement shall be the arbitration law of Mediterraneo **(I)**. Further, the Arbitral Tribunal shall have jurisdiction to decide the dispute and the authority to adapt the contract **(II)**.

I. The law applicable to the arbitration clause and its interpretation is the law that the Parties agreed to be the governing law of the contract

3. Respondent argued that the choice of law set forth in provision 14 of contract did not apply to the arbitration agreement because of the separability doctrine. Respondent also refused to accept the law of Mediterraneo as the express and implied choice of law governing the arbitration clause.
4. However, the doctrine of separability is irrelevant to the choice of law **(A)**. Further, the law contained in choice of law clause is deemed to be the Parties' implied choice of law applicable to the arbitration agreement **(B)**.

A. The concept of separability is irrelevant to the determination of the choice of law

5. In an attempt to reinforce its argument, Respondent raised the doctrine of separability to pin point the absence of law applicable to arbitration clause. Respondent's reasoning nonetheless was inconsistent with the doctrine's core when it argued that the law of Mediterraneo exclusively governed the sales contract, and not an arbitration agreement [*Ans. to Notice of Arb.* ¶14].
6. The core of separability doctrine does not determine the governing law for the arbitration clause. Under the doctrine, the arbitration agreement is regarded as a self-autonomous contract separable from the main one [*Lew/ Mistelis/ Kröll* 102]. The purpose of a

separation is to affirm that the invalidity of a main contract will not instantly affect the arbitration agreement's validity. On this ground, the arbitrators' jurisdiction to rule the dispute is maintained and the Parties' right to arbitration is not disregarded despite the invalidity of the main contract [*Moses* 19]. Thus, the integrity of arbitral proceedings and the Parties' right to arbitral submission are what the principle actually concerns [*Rosen* 601; *Lew/ Mistelis/ Kröll* 102-103].

7. Even though the arbitration agreement is a separable contract, it is not separate for all purposes [*BCY Case*]. The fact that an arbitration clause is independent from the underlying contract is irrelevant to whether there should be a different law governs an arbitration agreement. Precisely, the separation between the main contract and the arbitration agreement does not indicate that the arbitration clause entails a specific or different choice of law. In addition, the separability doctrine shall not be the means to justify a conclusion that the seat law is an implied choice of law governing the arbitration agreement, as the doctrine merely separate arbitration agreement for the preservation of the Parties' right to arbitration and the arbitrators' jurisdiction [*Leong/ Tan* 79; *BCY Case*]. Therefore, the separability principle's core does not determine the law governing the arbitration agreement, nor does it require the specific choice of law for the arbitration clause. Respondent's argument thereby is not accordant to the core of separability doctrine.

B. The law of Mediterraneo is the implied choice of law that shall govern the arbitration clause

8. As stated in a contract, the law of Mediterraneo, including CISG, is mutually agreed to be the only express choice of law [*Cl. Ex. 5*]. In the present case where the law governing an arbitration agreement is absent, the Parties' implied choice of law shall be applicable to the arbitration agreement.
9. The implied choice of law is based on the natural inference that takes a view on the Parties' intention regarding the choice of law. The assumption deems that the Parties would intend to have the whole of their relationship governed by the same law system. In this sense, where the law governing the arbitration agreement is absent, it is presumed that the Parties have impliedly chosen the express substantive law to also govern the arbitration agreement. On this ground, the express substantive law of contract shall be taken as the Parties' implied choice of the proper law governing the arbitration agreement, as the substantive law represents a strong indication of Parties' intention regarding the arbitration agreement [*Sulamérica case; Arsanovia case*]. On the contrary, if the

Parties' intention were to be different, the Parties are expected to have specified the express choice of law in the arbitration clause in the first place [*BCY Case*], which in this case the law of Danubia was not included by the Parties. Consequently, the law of Mediterraneo shall govern the arbitration agreement, for it is the Parties' implied choice of law which indicates the Parties' intention to have the same system of law governed the arbitration agreement.

10. Furthermore, in competition between the express substantive law and the law of the chosen seat of arbitration, the substantive law governing contract will be inferred as the Parties' implied choice of law applicable to the arbitration agreement [*Firstlink case*]. In other words, the law governing substantive contract is a stronger indication of an implied choice of law than the seat of arbitration [*Habas case*]. Hence, in determining the Parties' implied choice of law, the law of Mediterraneo shall prevail the law of Danubia.

II. The Arbitral Tribunal is granted the jurisdiction, including the power to adapt the contract

11. The interpretation of arbitration agreement under the substantive law applicable to contract manifests the Parties' intent to authorize the contract adaptation by the arbitrators since there is no explicit provision in the arbitration agreement that excludes the arbitrator's authority to adapt the contract **(A)**. The Arbitral Tribunal shall have jurisdiction to decide the dispute because Claimant's claim falls within the scope of arbitration agreement **(B)**.

A. There is no explicit provision in the arbitration agreement that excludes the arbitrator's authority to adapt the contract

12. The arbitration agreement is governed by the Mediterranean arbitration law which is a verbatim adoption of UNCITRAL Model law on international arbitration [*Proc. Ord. 2 ¶14*]. The arbitration agreement shall be interpreted in accordance with the Parties' intent under the substantive law applicable to the contract. Since the Mediterranean arbitration law is silent on the rules of arbitration agreement's interpretation, the contract law shall be observed to interpret arbitration agreement [*Born I 2009 1063*].
13. The CISG, the Parties' express choice of contract law, shall be applied to interpret the arbitration agreement. Although Art. 8 CISG primarily deals with the interpretation of a party's statement or conduct, it equally applies to the interpretation of the contract, according to legislative history and case law [*Digest 2008 1*]. Therefore, Art. 8 shall be applicable to the arbitration agreement's interpretation considering the arbitration agreement is also a form of contract.

14. In spite of Respondent's objection to contract adaptation by arbitrators, there is no provision in arbitration clause that prohibits the Tribunal from doing so. The arbitration clause shall be interpreted in accordance with the Parties' intent set forth in Art. 8 CISG when some terms of an arbitration agreement were missing or the writing did not represent the Parties' true intent [*Vorobey* 144]. In this present case, the Parties' intent has been shown to approve contract adaptation by the Tribunal.
15. To determine the intent of the Parties, all due considerations shall be given to the negotiations [*Art. 8(3) CISG*]. Upon the discussion regarding the dispute resolution clause, Mr. Antley, Respondent's former negotiator, declared that contract adaptation should be the task of arbitrators to which Claimant's former negotiator agreed [*Cl. Ex. 8*]. In light of this fact, the statement made by Mr. Antley was clear and easily understood by Claimant [*Magnesium Case*] that Respondent approved the power of contract adaptation by the Tribunal. Therefore, Respondent knew or could not have been unaware of the intent to have the Tribunal adapt the contract [*Art. 8(1) CISG*].
16. Furthermore, facts from another arbitration where Respondent was involved as a party shall be taken into account in order to interpret Respondent's intent. The facts from another arbitration in which Respondent was one of the Parties revealed that Respondent itself had asked the Tribunal to resort to contract adaptation [*Resp. Ltr. 3 Oct.*]. Respondent who at that time also suffered from the increased tariff had been successfully granted with the request [*Proc. Ord. 2 ¶39*]. Hence, it is apparent that Respondent's conduct in previous arbitration justified contract adaptation by the Tribunal.
17. Consequently, the absence of the provision in arbitration agreement prohibiting contract adaptation by the arbitrators would only cause a reasonable person in the same circumstances of the Parties to understand that the arbitration clause did not exclude the Tribunal's authority to adapt the contract [*Art. 8(2) CISG*].
18. Where the interpretation of arbitration agreement is governed by Article 8 CISG, the application of the parol evidence rule is precluded [*Marble Ceramic Center case*]. The Tribunal is therefore not limited to admit the extrinsic evidence when determining the Parties' subjective and objective intent because Art. 8(3) offers a wider scope of admissible evidence [*Digest 2008 3; Claudia case*]. Additionally, the arbitration is governed by the Mediterranean arbitration law which has no provision limiting the reliance on extraneous evidence for interpretation of the arbitration clause.
19. The CISG which is a substantive law governing the contract shall be applicable to the interpretation of arbitration agreement since the arbitration clause is a contractual

provision [*Walter case*]. Conclusively, the arbitration agreement shall be interpreted based on the Parties' intent which authorizes the contract adaptation by the Tribunal.

B. The claim for contract adaptation falls within the scope of arbitration agreement

20. The Arbitral Tribunal shall consider the pro-arbitration presumption when determining the scope of arbitration clause. The presumption suggests that the arbitration agreement should be interpreted expansively and extended to encompass disputed claims in cases of doubt [*Born I 2009 1067*]. Therefore, the extensive interpretation of arbitration agreement would include the claim for contract adaptation.
21. The interpretation of arbitration agreement leads to the conclusion that the Arbitral Tribunal shall have the power to adapt the contract, and the claim for contract adaptation is within the scope. The Tribunal does not exceed its power to adapt the contract. The Arbitral Tribunal thereby has jurisdiction to decide the dispute regarding the contract adaptation. Hence, Claimant's claim is admissible.

**PART 2: THE TRIBUNAL SHOULD ALLOW THE ADMISSION OF THE
EVIDENCE FROM THE OTHER ARBITRATION**

I. The Tribunal has the power to admit the evidence from the other arbitration proceedings

22. According to Respondent, the evidence from the other arbitration should not be admitted in the current arbitration based on assumption that the evidence had been obtained through illegal means [*Resp. Ltr. 3 Oct*]. To the contrary, Claimant will show that the Tribunal has the power to admit the evidence from the other arbitration for the following reasons: First, the Tribunal has wide discretion on the taking of evidence pursuant to the HKIAC Rules and the UNCITRAL Model Law **(A)**. Second, the Tribunal has the power to conduct the taking of evidence as it deems appropriate and shall follow the guidance of the IBA Rules **(B)**.

A. The Tribunal has wide discretion over the admissibility of evidence under HKIAC Rules and the UNCITRAL Model Law

23. The principle of party autonomy allows the Parties to determine which rules will govern the conduct of procedure in international commercial arbitration [*Born 2015 426-427*]. Therefore, the agreement between the Parties should be observed first. In this case, the Parties agreed to conduct the proceedings in accordance with the HKIAC Rules [*Cl. Ex. 5; Proc. Ord. 1 ¶ II*]. As Mediterraneo law is the implied choice of law that govern

arbitration clause [¶ 9] and the arbitration law of Mediterraneo is a largely verbatim adoption of UNCITRAL Model Law [*Proc. Ord. 2* ¶ 14], the Model Law together with HKIAC Rules will govern the conduct of the taking of evidence.

24. Art. 19 of the Model Law states that the Tribunal shall follow the procedure agreed by the Parties in conducting the proceedings and in the absence of such agreement, the Tribunal should conduct the arbitration in the manner it considers appropriate. Both the HKIAC Rules and the Model Law lack specific details on the taking of evidence and only specify that the tribunal has the power to and shall determine the admissibility, relevance, materiality and weight of the evidence [*Art. 22.2 HKIAC Rules; Art. 19(2) Model Law*]. As a result of agreeing to the HKIAC Rules and Mediterraneo law as the Parties' implied choice of law, the Parties entrust the Tribunal with wide discretion on the taking of evidence.

B. The Tribunal has the power to conduct the proceedings, including the conduct on the taking of evidence, in any way it deems appropriate and shall follow the guidance of the IBA Rules

25. The Tribunal has the power to exercise its discretion widely regarding the taking of evidence and there are no specific provisions regarding the admissibility of the evidence in both the HKIAC Rules and the Model Law [¶ 24]. Therefore, it would be reasonable for the Tribunal to adopt the IBA Rules as guidelines for the conduct of the current proceedings since the IBA Rules provide more details on the taking of evidence, including the admissibility and assessment of evidence [*Art. 9 IBA Rules*].
26. Despite the fact that it is not binding, the IBA Rules reflect international best practices on the taking of evidence [*Redfern/Hunter* ¶ 6.95; *Born 2014* 2347] and have gained wide acceptance in the international arbitration community [*Com. IBA Rules* 1; *IBA Rules Foreword; Born 2014* 2348]. Even where the Parties have not expressly agreed to adopt the IBA Rules, the Tribunal can still exercise its discretion to apply the rules to the arbitration as guidelines to help develop their own procedure [*Preamble* ¶ 2, *Art. 1(1) IBA Rules; ICC Case 16655*].
27. The IBA Rules are designed to supplement and apply in connection with institutional rules that govern the arbitration [*Foreword, Preamble* ¶ 1 *IBA Rules*], therefore, the Tribunal can adopt them in whole or in part [*Foreword IBA Rules*] as it sees fit along with

the HKIAC Rules. Even though the IBA Rules do not cover all the possible circumstances, they serve as a very useful guidance on the issue of evidence. For these reasons, the Tribunal should exercise its discretion to apply the IBA Rules.

II. CLAIMANT is entitled to submit the evidence from the other arbitration even when it might be obtained through illegal means

28. The Tribunal should allow the admission of the evidence from the other arbitration because of the fact that it is relevant to the case and material to its outcome **(A)**, and that Claimant was not directly involved in the process of obtaining the evidence that might be illegal **(B)**. Furthermore, the Tribunal still retains its discretion to admit the evidence even if it is confidential **(C)** or was acquired through hacking **(D)**. Most importantly, if the Tribunal decides to deny the admission of the evidence from the other arbitration, it will substantially injure Claimant's rights **(E)**.

A. Evidence from the other arbitration is relevant and material to this arbitration and has a persuasive value

29. HKIAC Rules, Model Law and IBA Rules all states that the Tribunal has the power to determine the admissibility, relevance and materiality of the evidence [Art. 22.2 *HKIAC Rules*; Art. 19(2) *Model Law*; Art. 9(1) *IBA Rules*]. Claimant would like to demonstrate that the evidence from the other arbitration is relevant and material **(1)** and as it is from the arbitration also administered under the HKIAC Rules, it should be considered by the Tribunal in this arbitration as a persuasive authority **(2)**.

(1) The evidence from the other arbitration is relevant and material

30. *Relevance* means that the evidence must be useful in supporting the party's factual allegations and *materiality* means that the tribunal considers the evidence as essential in determining whether factual allegations are true or not [*Raeschke-Kessler* 427]. Sufficient relevance and materiality to the outcome of the case are of great significant because lack of such could cause the evidence to be excluded as stated in Art. 9(2)(a) of the IBA Rules.

31. In this present case, the evidence from the other arbitration is relevant to the case and material to its outcome because it supports Claimant's claim on the adaptation of the price. The Partial Interim Award from the other arbitration shows Respondent's contradictory behaviors concerning the adaptation of the price invoking an unforeseeable change of circumstances [*Resp. Ltr.* 3 Oct.; *Proc. Ord.* 2 ¶ 39]. In the other arbitration,

Respondent asked for the adaptation of the price as it was negatively affected by an unforeseen tariff of 25%, while in this arbitration Respondent strongly objects any need to adapt the contract when Claimant was the one affected by an additional tariff of 30% in an almost identical situation [*Ibid.*]. Since the Partial Interim Award is most likely the only document that shows Respondent's contradictory behavior, Claimant would lose a significant and reasonable opportunity to support its claim without it. Thus, the award from the other arbitration is relevant to the case and material to its outcome and should not be excluded.

(2) The evidence from the other arbitration has a persuasive value

32. Since the Tribunal has a wide discretion on the taking of evidence [¶ 24], the Tribunal can refer to past awards to help in making decision on the current proceedings [*ICC 8420; ICC 10973; ICC 6379; ICC 9302; Kaufmann-Kobler 362; Buys 136*]. The Partial Interim Award from the other arbitration should be referred to in this case, not only because the facts and circumstances are almost identical to this arbitration, but also because the other arbitration was as well conducted under the HKIAC Rules with Respondent as one of the Parties, albeit in an opposite position [*Proc. Ord. 2 ¶ 39*]. With such circumstances, the tribunal in the other arbitration still confirmed its power to adapt the contract [*Ibid.*].
33. Furthermore, the Tribunal can be assured about the credibility of the evidence as it is an award from an arbitration administered by HKIAC as specified in the arbitration clause in the disputed contract in the other arbitration [*Ibid.*]. Given these reasons, the Partial Interim Award from the other arbitration has a highly persuasive value that the Tribunal can exercise its discretion to refer to and rely on in determining its own jurisdiction regarding the adaptation of the contract as well as assessing Respondent's intention and discrepant behavior.

B. CLAIMANT did not take part in the process of illegal obtainment of the evidence

34. In determining whether illegally obtained evidence should be admissible or not, the Tribunal should consider the degree of involvement of the party seeking to benefit from it in procuring such evidence [*Blair/Gojkovic 256; Boykin/Halavic 33*]. The evidence is considered inadmissible if the party directly engaged in the unlawful activity to acquire the evidence, such as trespassing onto private property to get documents, as it contradicts the principle of good faith [*Methanex case*]. However, if the evidence is obtained through a

‘disinterested third party’ who is not a party to the proceedings and has nothing to gain or lose from its outcome, even though it was initially obtained by illegal conduct, the evidence could be admissible [*Blair/Gojkovic* 256; *Hulley case*; *Caratube case*]. Therefore, the particular circumstances of the case should be taken into consideration when determining the admissibility of illegally obtained evidence [*EDF case*].

35. In the present case, Claimant did not take part in the obtainment of the award whether the process is illegal or not, as Claimant sought the award through a company which provides intelligence on the horseracing industry [*Proc. Ord.* 2 ¶ 41]. Even though the company has a doubtful reputation as to where it gets information, it is still not certain how the company got the award [*Ibid*]. Regardless, whether the company got the award from the hacker or Respondent’s former employee [*Ibid*], Claimant definitely had no part in it. It can reasonably be concluded that the ones committing the wrongful act would be the hacker or Respondent’s former employees that breach their confidential agreement.
36. Claimant simply tried to find evidence that would help support its claim and happened to know that a company offers to sell the Award through business connections in the horseracing industry [*Ibid* ¶ 42]. Therefore, Claimant only tried to exercise its right to present its case in good faith by purchasing the award from the company and requested to submit it to the tribunal.
37. The company providing the award has no connection to the current arbitration and would not be affected in any way by its outcome, therefore, the company should be considered as a disinterested third party. Together with the fact that Claimant did not take part in the illegal obtainment of the award and its relevance and materiality [¶ 31], the Tribunal should consider the award to be admissible.
38. Furthermore, the Tribunal does not need to be concerned that allowing the admission of illegally obtained evidence would affect the enforceability of the award. Since even in investor-state arbitrations that tend to affect a larger group of people [*Buys* 134] and should be more concerned regarding public policy that could lead to unenforceability of the award still allow the admission of illegally obtained evidence in several cases [*Blair/Gojkovic* 256; *Hulley case*; *Caratube case*]. As a result, the current proceedings which is a private international commercial arbitration that only affects the Parties involved should

not have any problem about the enforcement of the award because of the admission of evidence.

C. Even if the evidence is confidential, the Tribunal still has the power to allow the presentation of such evidence

39. Respondent claimed that the Award from the other arbitration is confidential, as a result it should not be admitted in the current arbitration [*Resp. Letr.* 3 Oct.]. Claimant will establish that even if the award is confidential, the Tribunal still retains the power to admit it to the arbitration according to the IBA Rules **(1)**. Moreover, revealing the award in the current proceedings will not affect others' rights and the Tribunal will actually benefit from it **(2)**. Lastly, the principle of transparency should not be excluded by confidentiality and should be promoted in private international arbitration **(3)**.

(1) The IBA Rules allow the Tribunal to determine what type of confidentiality is compelling

40. Claimant acknowledges Respondent's argument concerning confidentiality of the proceedings of the other arbitration pursuant to Art. 42 of HKIAC 2013 Rules [*Resp. Letr.* 3 Oct.], which is equivalent to Art. 45 of HKIAC 2018 Rules. It is undoubtedly an obligation to keep information relating to the arbitration as well as the award confidential [Art. 45 *HKLAC Rules*]. However, that obligation only applies to those involved in the other arbitration, specifically the parties, arbitrators and witness, and it does not bind third parties [Art. 45.1, 45.2 *HKLAC Rules*; *Born II 2009 2286*]. It is evident that Claimant has no part in the other arbitration, therefore, is not bound by such obligation. Claimant would like to put emphasis on the fact that the one under both contractual and statutory obligation to keep the award confidential is Respondent's former employees [*Resp. Letr.* 3 Oct.] and they would have been the one who breached the obligation if the award really was obtained from them. As a result, by submitting the award as an evidence Claimant did not breach any confidential obligation.

41. According to Art. 9(2)(e) of the IBA Rules, the Tribunal shall exclude evidence on the "grounds of commercial or technical confidentiality" that the Tribunal sees as *compelling*. Nevertheless, the Tribunal still retains the discretion in determining whether the confidentiality of the award would justify its exclusion from evidence as the Tribunal

must deem the concerns to be ‘compelling’ to exclude the evidence [Art. 9(2)(e) *IBA Rules; Com. IBA Rules* 26]. Compelling means that the Tribunal must see the concerns as “overwhelming or irresistible” [*Ashford* 146].

42. Even in the case that the Tribunal finds the award from the other arbitration to be confidential, the Tribunal still has power to permit it to be presented with suitable protective measure [Art. 9(4) *IBA Rules; Com. IBA Rules* 26].

(2) Disclosing the confidential evidence in this proceedings will not affect others’ rights and even benefits this arbitration

43. Even though the Partial Interim Award might be confidential, it has already been made available to the company providing intelligence on the horseracing industry, who is an outsider and was not involved in the other arbitration [*Proc. Ord. 2 ¶* 41]. As a result, the Award is also available for sell to anyone who wishes to purchase the information as well. Disclosing the Award in the current proceedings would do no harm more than what has already been done.
44. Whether the Award will be admissible or not, Claimant will still eventually gain the information of the Award. More importantly, Respondent is one of the parties in the other arbitration [*Resp. Letr.* 3 Oct.; *Proc. Ord. 2 ¶* 39], which means that both Parties in the current proceedings already have insight of the Partial Interim Award. Therefore, presenting the Award in this arbitration will not affect Respondent’s or others’ right as the Award will not be disclosed to public and will reach no further audience than the ones who already know about it. The confidence of the Partial Interim Award from the other arbitration will also be under the protection of Art. 45 of HKIAC Rules as well, affirming that it will be confidential and will not be disclosed unless it is allowed by the HKIAC Rules [Art. 45.3, 45.5 *HKIAC Rules*].
45. Furthermore, the Tribunal will gain significant information and facts that would be extremely helpful in determining the procedural issues in this arbitration, since the Partial Interim Award contains statement of facts and the reason why the tribunal of the other arbitration had confirmed its power to adapt the contract [*Proc. Ord. 2 ¶* 39; Art. 35.4 *HKIAC Rules*] when facing with the same issues and almost identical situations to the current proceedings [*¶* 31]. Even though international commercial tribunal is under no mandate to follow precedent [*Pislevik* 250], past awards can still provide useful guidance

to future tribunals [*Born II 2009 2287*]. Hence, disclosing the Partial Interim Award from the other arbitration will not affect others' rights and also can serve the Tribunal as a reference or useful guidance.

(3) The principle of transparency does not unjustifiably undermine confidentiality and greater transparency should be promoted and recognized in international commercial arbitration

46. Contrary to Respondent's claim that the confidential obligation of HKIAC Rules should exclude the argument that documents can be disclosed under the principle of transparency [*Resp. Letr. 3 Oct*], Claimant would like to show that principle of transparency does not contradict confidentiality and both principles can coexist.
47. Actually, benefits of greater transparency achieved by publishing awards can outweigh concerns for confidentiality [*Byys 121*]. In general, the publications of award would increase knowledge of the public about arbitral process which then could encourage more use of arbitration and improve arbitration system as a whole [*Ibid 135, 137*]. There are several other advantages of greater transparency, not only that it would lead to a more consistency in arbitration law as clear and logical awards has persuasive value that can be referred to by subsequent tribunals or Parties, it also could lead to a higher chance of implementation of the award if the public has an opportunity acknowledge that it is fair [*Ibid 136*]. HKIAC Rules seem to share the notion of greater transparency as well, assuming from the change in confidentiality clause from the earlier version of the Rules which provided that the award can only be published only if there is a request to do so addressed to HKIAC [Art. 42.5 *HKIAC 2013 Rules*]. While in the newly active version, HKIAC may publish any award without a request if no party objects [Art. 45.5 *HKIAC 2018 Rules*]. Given these reasons, the principle of transparency should be promoted in international commercial arbitration.
48. However, it does not mean that confidentiality should be disregarded. Greater transparency brought by awards publications can be reconciled and coexist in harmony with confidentiality [*Born II 2009 2287*]. The awards can be published in excerpted form or redacted version that exclude sensitive information in particular names and identifying characteristics of the Parties [*Ibid*; Art. 45.5(a) *HKIAC Rules*; Art. 30(3) *ICDR Rules*]. This way the essential substance of the awards can be made public bringing greater

transparency, and at the same still keep sensitive information confidential [*Born 2015* 2287].

49. Expectations of confidentiality of the arbitral awards are significantly lower compared to other material in the proceedings because it is unlikely to affect the outcome of the case as the proceedings are usually concluded when the awards are published [*Born II 2009* 2284]. Disclosure of a partial awards is also unlikely to affect the arbitration in progress [*Ibid.* 2285]. Hence, the principle of transparency does not contradict confidentiality and disclosing the Partial Interim Award in the present arbitration would not affect the other ongoing arbitration as the Award only determined the procedural aspect [*Proc. Ord. 2 ¶ 39*] which is clearly a separate matter from the merits still in progress [*Ibid.*].

D. If the evidence is obtained through hacking and made public, the Tribunal still has the power to admit it

50. The Tribunal still retains its discretion in determining the admissibility of illegally obtained evidence [¶ 24, 34], therefore, even if the Award was obtained through hacking it is still within the Tribunal discretion to admit it as evidence. Respondent had used an outdated firewall to protect its computer system, which in return created a security gap in its computer system and increase the risks of being hacked [*Proc. Ord. 2 ¶ 42*]. Consequently, there is also a significantly higher chance that the Award could be made public by the hacker. If that is the case, it is all the more reason for the Tribunal to consider the Award as admissible. There are several arbitral awards implying that illegally obtained evidence is admissible because the tribunals in those cases relied on the evidence obtained through *Wikileaks* or similar source that was made public by third Parties [*Hulley case; Caratube case*]. The reason given by those tribunals are that the Parties seeking to rely on evidence obtained illegally did not breach the duty of good faith as they were not the one committed the hack and simply relied on evidence that was already made public by a third party [*Ibid.*]. In the present case, the Tribunal has such a wide discretion in the taking of evidence that regardless of how the Award was obtained it still retains the power to admit such evidence [¶ 24, 34]. However, if the Award had in fact been made publicly available by a third party, the Tribunal should deem the evidence admissible without a doubt.

E. If the Tribunal denies the admission of the evidence from the other arbitration, it will substantially violate Claimant's right to fair and reasonable opportunity to be heard and present its case under the principles of natural justice

51. By not allowing the admission of the Partial Interim Award from the other arbitration, the Tribunal will substantially injure Claimant's rights to be heard and will be depriving Claimant of the appropriate opportunity to present its case according to the principle of fair treatment and natural justice. The right to be heard is a fundamental principle that ensure a fair proceeding [*Baldwin* 233] by giving each party an opportunity to present the relevant facts and view of the case [*O'Malley* ¶ 9.115]. These principles are reflected in Art. 13.1 and 13.5 of the HKIAC Rules respectively which provide that the Tribunal shall ensure that the Parties have a reasonable opportunity to present their case and shall do everything necessary to ensure a fair conduct of the arbitration. The IBA Rules are also aimed for a fair process for the taking of evidence [Preamble ¶ 1, Art. 9(2)(g) *IBA Rules*]. Therefore, if the Tribunal denies the admission of the Partial Interim Award, Claimant will not have appropriate opportunity to present its case that will help support its claims as the Award is relevant the case and material to its outcome [¶ 31], which contradicts both the HKIAC Rules and the IBA Rules that are the law applicable to the current proceedings [¶ 23, 24].
52. Claimant would like to invite the Tribunal to carefully weigh between the interest of finding the truth and the damage that would occur to Respondent as the objecting party. By excluding the Partial Interim Award, the Tribunal will gravely deprive Claimant of its right to be heard and treated fairly which are fundamental principles provided in both the HKIAC Rules and the IBA Rules. It will also unreasonably prevent the Tribunal from being able to determine the outcome of the case with full knowledge of all relevant facts that could affect the outcome. On the other hand, if the Tribunal considers the Award as admissible, Respondent would hardly be affected or deprived of any rights as the information of the Award is already know to both Parties as Respondent is one of the Parties in the other arbitration and is well aware of its own behavior.
53. To conclude the Tribunal has the power to and should allow Claimant to submit the Award from the other arbitration as evidence because it is relevant to the case and material to its outcome and even if it was obtained illegally at one point, it is still admissible. Denying the admission of the Award would substantially injure Claimant's

right to be heard and deprive it from the appropriate opportunity to present its case under the principles of natural justice.

PART 3: CLAIMANT IS ENTITLED TO THE PAYMENT OF US\$ 1,250,000 OR ANY OTHER AMOUNT RESULTING FROM AN ADAPTATION OF THE PRICE

I. The contract of sale entitles Claimant to a payment of US\$ 1,250,000.

54. As the contract between the Parties is governed under CISG **(A)**, the interpretation of the contract shall be in accordance with CISG that the contractual clauses excluded Claimant's responsibility for the tariffs **(B)**. Even if the Tribunal were to find that Claimant's responsibility for tariffs is included under the contract, the adaptation clause authorizes the Parties to adapt the contract **(C)**.

A. CISG is applicable to the hardship clause concluded between the Parties.

55. Whereas "it is undisputed that the Parties that Equatoriana, Mediterraneo and Danubia are Contracting States of the CISG" [*Proc. Ord. 1*] and whereas the contract of sale of goods between the Parties is of international character by which the places of business of the Parties are in different Contracting States [*Cl. Ex. 5*], CISG is applicable to the contract between the Parties pursuant to Art. 1 (1) (a) of CISG [*Mitias case, Al Palazgo case*]. Consequently, the effects of the hardship clause "arising from [the] contract" shall be governed by CISG pursuant to Art. 4.

B. Claimant is not responsible for the tariffs.

56. The hardship and the DDP clauses were concluded between the Parties in the contract. These clauses explicitly stipulated that Claimant was not responsible for the tariffs. The hardship clause governing the contract shall exclude Claimant's responsibility for tariffs in accordance with Claimant's intent **(1)**. Furthermore, Respondent cannot refer to the DDP clause based merely on Claimant's experience in delivery **(2)**.

(1) Claimant's responsibility for tariff is excluded by the hardship clause.

57. Pursuant to Art. 11 Of CISG, "a contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses." Thus, the contract between the Parties shall not be interpreted merely upon the written agreement [*Cl. Ex. 5*], but emails and replies as conducts of the Parties shall be taken into consideration as well [*Friedrich case*].

58. Furthermore, the statements made by Claimant shall be consequently interpreted, pursuant to Art. 8(1) of CISG, "according to [Claimant's] intent where [Respondent]

knew or could not have been unaware what that intent was” [*Hanvba case; Fruit and vegetables case; Machine for repair of bricks case*]. In this case, Respondent well received Claimant’s statement that “[Claimant is] 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 regulation or import restrictions” [*Cl. Ex. 4*]. The circumstances in which Respondent well acquired Claimant’s email [*Cl. Ex. 4*] explicitly suggested that RESPONDENT knew Claimant’s intent not to be responsible for risks “associated with changes in customs regulation or import restrictions” [*Building materials case 2006*]. Therefore, one of the contract clauses was concluded that Claimant be exempted from responsibility for tariffs.

59. Even if the unexpected custom regulation imposed by the Government of Equatoria shall not be considered as an “unforeseen event making [Claimant’s contractual obligations] more onerous comparable to health and safety requirement” [*Cl. Ex. 5; Coker case*], the hardship clause was undisputedly established, pursuant to the interpretation of Claimant’s intent under Art. 8(1) of CISG, that Claimant was not responsible for risks “associated with changes in customs regulation or import restrictions” [*Cl. Ex. 4*]. Hence, the imposition of unforeseen tariffs by the Government of Equatoria was undisputedly resulted in damages paid in advance by Claimant whose responsibility for such burden was clearly excluded under the hardship clause of the sale contract.

60. Therefore, whereas the hardship clause exempting Claimant from the responsibility of risks “associated with changes in customs regulation or import restrictions” was concluded [*Cl. Ex. 4*], Claimant was not responsible for the tariffs.

(2) The DDP clause of the contract does not cover tariffs as Claimant’s responsibility.

61. Although the DDP clause was not concluded in the written agreement [*Cl. Ex. 5*], the clause was still considered as a part of the contract. Pursuant to Art. 11 of CISG, the contract needs not to be concluded in or evidenced by writing. Electronic couriers as conducts between the Parties shall also provide evidence for the contract as another mean of the conclusion of the contract [*Friedrich case*]. Respondent made a clear offer to Claimant [*Cl. Ex. 3*] that the DDP clause was to be imposed on Claimant. Therefore, Claimant is responsible for the delivery on the basis of Claimant’s experience in shipment.

62. However, the DDP clause made by Claimant shall be consequently interpreted, pursuant to Art. 8(1) of CISG, “according to [Claimant’s] intent where [Respondent] knew or could not have been unaware what that intent was” [*Hannba case; Fruit and vegetables case; Machine for repair of bricks case*]. The statement made by Claimant was sufficiently explicit to acknowledge Respondent that Claimant’s responsibility for delivery must be based on “[Claimant’s] much greater experience in the shipment of frozen semen” [*Cl. Ex. 3*]. It shall be taken into consideration based on the Parties’ subjective intent [*Hannba case; Fruit and vegetables case; Machine for repair of bricks case*] pursuant to Art. 8(1) of CISG. Claimant accepted the responsibility for delivery offered by RESPONDENT as stipulated in the DDP clause [*Cl. Ex. 4*] because Respondent referred to “the urgency of the delivery and [Claimant’s] much greater experience in the shipment of frozen semen” [*Cl. Ex. 3*]. The purpose of the DDP was only to make the shipment more commercially favorable.
63. The tariffs as an addition to Claimant’s responsibility shall be excluded by the intention of the Parties in the first stage of negotiation. Although customs regulation concerned the delivery duty of Claimant, it was undisputedly agreed between the Parties that “[Claimant is] 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 regulation or import restrictions” [*Cl. Ex. 4*]. It is universally acknowledged that the purpose of tariffs is to “[protect] domestic industries from foreign competition ... [t]hrough the imposition of an extra cost on foreign goods” [*Lester/ Mercurio/ Davies 220*]. Therefore, since tariffs as damages to the business deal cannot be considered on the ground of commercially favorable shipment as the Parties intended, Claimant shall not be responsible for the tariffs.
64. Although it is generally acknowledged that the DDP clause means that the seller is responsible for delivery and bears all risk associating with such delivery including tariffs, the DDP clause shall exempt the responsibility of the seller for such tariffs if it is interpreted so according to the Parties’ subjective intent [*Hannba case; Fruit and vegetables case; Machine for repair of bricks case*]. Claimant explicitly stated in their email replying to Respondent that “[Claimant is] 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 regulation or import restrictions” [*Cl. Ex. 4*].” In response, Respondent accepted such condition regarding the DDP clause. Therefore, the intention of the

Parties established that the DDP clause does not include Claimant's responsibility for tariffs.

65. Even if Mr. Shoemaker, the authorized Respondent's negotiator, claimed that "to [his] understanding DDP meant that all risks had to be borne by [Claimant]" [*Resp. Ex. 4*], Respondent cannot rely on such an unreasonable assertion of Mr. Shoemaker pursuant to Art. 8(2) of CISG. Apart from the subjective intent of the Parties, Mr. Shoemaker's knowledge shall be interpreted according to the way in which "[he] would have been understood by a reasonable person in the same position" [*Chemical products case*]. The Parties have made clear that the purpose DDP clause was simply to render the shipment more commercially favorable due to Claimant's experience in shipment [*Cl. Ex. 3*]. Although Mr. Shoemaker undertook the authority to negotiate and might not thoroughly understand the ongoing process of the negotiation, he could have known the circumstances of the negotiation as a reasonable negotiator would observed. Had Respondent carefully observed the negotiations, as a reasonable person in the same circumstances would have done, Respondent would have realised that the purpose of the DDP clause was inconsistent with Respondent's careless acknowledgement.
66. Therefore, Claimant was not responsible for the tariffs excluded by the DDP clause based on the intention of the contract.

C. Even if the Tribunal were to find that Claimant's responsibility for tariffs is included under the contract, the adaptation clause authorizes the Parties to renegotiate.

67. Even if the Tribunal were to find that the hardship and the DDP clauses did not exempt Claimant's responsibility for the tariffs, the adaptation clause under the contract still authorized the Parties to adapt the contract [*AM. Optical corp case*]. Mr. Shoemaker's conduct led Claimant to reasonably believe in good faith that he was authorized to conclude the contract on behalf of Respondent **(1)**. Hence, Respondent cannot reject Mr. Shoemaker's representation regarding the conclusion of the adaptation clause **(2)**.

(1) Given the conduct of Mr. Shoemaker, Claimant reasonably believed, in good faith, that he was authorized to conclude the contract on behalf of Respondent.

68. The principle regarding the authority of the negotiators is not expressly settled by CISG, hence, pursuant to Art. 7(2) of CISG, the circumstances shall be settled in conformity with the general principles on which CISG is based. [*Rolled metal sheets case*]

69. In this case, the principle of estoppel shall apply. Estoppel shall be implied as a general principle on which CISG is based as reflected by Art. 16(2)b and Art. 29(2) [*Rolled metal sheets case*].
70. The circumstances in which Mr. Shoemaker “called Ms. Napravnik [representing Claimant] to discuss the issue with her” and “to ensure that the remaining 50 doses were actually shipped” [*Resp. Ex. 4*] were apparent to Claimant who believed in good faith that Respondent “held [Mr. Shoemaker] out as possessing sufficient authority to embrace the [negotiation]” [*Ackerman case*]. Such Mr. Shoemaker’s conduct “allowed [Claimant] to believe that [Mr. Shoemaker’s authority to conclude the contract] existed, with the result that there is reliance upon such belief” [*Fridman 97*]. Moreover, provided that Mr. Shoemaker is “responsible for the development of the racehorse breeding program” [*Resp. Ex. 4*], Claimant shall also presume that Mr. Shoemaker had the authority to negotiate and conclude the contract “which managing agents normally do” [*Summit Properties case*]. Although Mr. Shoemaker said that “[he] had not been involved in the negotiations of the contract,” [*Resp. Ex. 4*] he cannot assert that “the true state of affairs was far different [from the authority to conclude the contract on behalf of Respondent], if to do so would involve [Claimant] in suffering some kind of detriment” [*Fridman 97*]. Hence, Mr. Shoemaker represents Respondent to conclude the contract by his conduct in conformity with the principle of estoppel.
71. Therefore, Respondent shall not make assertion in contradiction to the representation of Mr. Shoemaker to negotiate and conclude the contract.

(2) The adaptation clause is effectively incorporated in the contract.

72. The adaptation clause was concluded on 21 January 2018 when the Parties discussed on telephone. Mr. Shoemaker, on behalf of Respondent, clearly stated that “if the contract provides for an increased price in the case of such a high additional tariff [Respondent] will certainly find an agreement on the price” [*Resp. Ex. 4*]. Under such stipulation firmly settled in this case where the transaction cost was considerably increased due to unforeseen custom regulation imposed by the Government of Equatoria, the Parties shall adapt the contract.

II. Claimant is entitled to the payment resulting from the modification of the contract pursuant to Art. 29 of CISG

73. The sales contract is governed by CISG, which included the modification of contract pursuant to Article 29 **(A)**. Article 29 is applicable as there was no written provision requiring a written modification of the contract **(B)**. Respondent's action further preclude the requirement of a written modification of the contract **(C)**. The sales contract was modified as a result of the changed circumstances **(D)**. The modification contract entitled Claimant to the payment **(E)**.

A. The CISG is applicable to this contract.

74. The CISG governs the agreement and its modification. The Parties stated in article 14 of the sales agreement [*Cl. Ex. 5*] that the agreement shall be governed by the law of Mediterraneo and the United Nations Convention on Contracts for the International Sale of Goods. There is no derogation of this Convention in the sense of Art. 6. Thus, the CISG governs the modification of the contract by Art. 29.

B. There was no provision in the contract requiring any modifications or terminations by agreement to be in writing.

75. Art. 29 of CISG straightforwardly states that 'A contract may be modified or terminated by mere agreement of the Parties', with only one exception that if the contract contains any provision requiring any modification or termination by agreement to be in writing, the contract cannot be modified or terminated by agreement.

76. The written sale contract [*Cl. Ex. 5*] did not contain any provision stating the requirement of a written agreement to modify or terminate the agreement. To elaborate, there was no "no oral modification" clause or "written modification" clause [*Digest 2016 p.123 ¶ 7*]. As a result, Paragraph 1 of Art. 29 is applicable to this contract, and this contract can be modified by the mere oral agreement of Claimant and Respondent.

C. Even if there was a provision requiring modifications to be done in writing, Respondent's conduct asserted the preclusion of the provision requiring any modifications or terminations by agreement to be in writing.

77. If, against all expectations, the Arbitral Tribunal would find that clause 15 of the sale contract can be interpret as a requirement to modify or terminate the contract by written agreement, Respondent's conduct was enough to justify the preclusion stated in Paragraph 2 of Art. 29.

78. Respondent's conduct of negotiating with Claimant via telephone call [*Cl. Ex. 8; Resp. Ex. 4*] is sufficient [*Forestal case*] to disallow Respondent from asserting provision requiring written agreement against Claimant. If Respondent was allowed to assert this provision, it would contravene with the purpose of this Article [*Com. Draft Art. 27*], as the Claimant had relied on the Respondent's conduct [*Schlechtriem*].

D. There was an agreement effectively constituting a modification of contract regarding the changed circumstances.

79. Art. 8(3) stated that, in order to determine the Parties' intentions, consideration of all relevant circumstances of the case including the negotiations, any practices which the Parties have established between themselves, usages and any subsequent conduct of the Parties must be taken into account.

80. Respondent showed a clear intention to establish a long-term trade relationship, as clearly stated in the email that Black Beauty Equestrian sent to Phar Lap Allevamento on 28 March 2017 and in a phone call between Ms. Napravnik and Mr. Shoemaker [*Cl. Ex. 3; Cl. Ex. 8*]. In the telephone call, Mr. Shoemaker said to Ms. Napravnik that Respondent needed the doses urgently and at that moment he could not authorized additional payment. However, he urged Ms. Napravnik into the shipment, relying on his statement that a solution would be found through negotiation and that Respondent was interested in a long-term relationship and was planning to buy another 50 doses from Empire's State. Claimant relied on that statement and shipped the doses as planned, as any reasonable business person looking for a long-term business relationship would have done.

81. Even though the conversation is not a written contract, the telephone call reflected in both Ms. Napravnik's affidavit and Mr. Shoemaker's is allowed to prove subsequent modifications of the contract terms [*Pukec*].

E. Claimant is entitled to the payment as a result of the modification of contract.

82. Both Claimant and Respondent were bound by the oral modification of contract, regarding the increased tariff. Claimant made clear to Respondent that it would not bear all risks associated with the delivery [*Cl. Ex. 5*]. With that in mind, the reason that Respondent did not pay for the tariff at the moment of acknowledgement, according to Mr. Shoemaker, was because he did not have the power to authorized additional payment at that time, but needed to continue with the contract as Respondent needed the doses.

83. As a result, when Mr. Shoemaker said that solution would be found through negotiation, it constituted the fact that Respondent agreed with the modification of contract regarding the increased tariff. Claimant performed its obligation of the modified contract, which was continuing with the last shipment even though new tariffs were implemented. Respondent must respectively pay for the tariff as a result of the modified contract.

III. Claimant is entitled to the payment resulting from the exemption of liability under Art. 79 of the CISG.

84. Since the sales contract was governed by CISG **(A)**, exemption of liability under Art. 79 can be invoked. There was no derogation of the effects of Article 79 **(B)**. As a result, Claimant is exempted from liability due to an impediment beyond control **(C)**. Claimant must be provided with a relief consistent with the CISG and the general principles on which it is based **(D)**.

A. CISG is applicable to this case.

85. The CISG governs the agreement. The Parties stated in Art. 14 of the sales contract [*Cl. Ex. 5*] that the agreement shall be governed by the law of Mediterraneo and the United Nations Convention on Contracts for the International Sale of Goods. There is no derogation of this Convention in the sense of Article 6. Thus, the CISG governs this agreement regarding exemption from liability and rights other than claiming damages.

B. The inclusion of the *force majeure* clause did not derogate the effects of Art. 79.

86. Many decisions have been made regarding the application of Article 79 and the inclusion of the *force majeure* clauses in the contract [*Digest 2016 p.379*]. Art. 79 can be derogated by Article 6 with the inclusion of *force majeure* clause [*Iron molybdenum case*]. However, Claimant and Respondent did not derogate Article 79 **(1)**. The included *force majeure* clause in the agreement was not enough to constitute a derogation **(2)**. Alternatively, Article 79 can still be applied even with the existence of *force majeure* clause **(3)**.

(1) To interpret the *force majeure* clause as excluding the application of Art. 79 would go against the intention of the party, undermining the principle set forth under Art. 8.

87. The included *force majeure* clause did not, in any way, expressly stated that it intended to exclude the application of Article 79 in the event of changed circumstances. Art. 8 of the CISG stated that “statements made by and other conduct if 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”.

88. In the present case, both of the Parties knew each other's' intent in entering into this sale agreement through extensive conversation that can be seen in the emails presented by both Parties.
89. In those conversations, and in the written sale contract [*Cl. Ex. 5*], both Parties never mentioned the derogation of Art. 79. Therefore, to interpret the intention of the Parties to derogate the application of Art. 79 would be completely groundless [*Com. Draft Art. 16*].
90. There was no express of, in any way, intention from both Parties to derogate the effect of Art. 79 arising from negotiations, practices which the Claimant and Respondent have established between themselves, usages and any subsequent conduct in the sense of Art. 8(3).
- (2) Additionally, the *force majeure* clause is not clear, unequivocal nor affirmative enough to constitute a derogation.**
91. It was held that, in order to derogate the effect of CISG under Art. 6 by *force majeure* clause, the clause must be clear [*Société case, Building materials case 2004; BP Oil case; Asante Technologies case*], unequivocal [*Auto case 2006; Auto case 2007*], and affirmative [*U.S. District Court case*]. These case are highly persuasive as they are directly mentioned in the CISG Digest regarding the inclusion of *force majeure* clause.
92. In the present case, both Parties never, whether in the email conversation, written agreement, nor oral conversation, provide a clear, unequivocal nor affirmative message in the clause regarding the derogation of Art. 79. In fact, the only time that a party mentioned this Art. is when the Respondent send the Answer to the Notice of Arbitration.
- (3) Alternatively, Art. 79 is still applicable when the *force majeure* clause has been incorporated into the contract.**
93. It was clearly implied that even though the Parties enter into an agreement with a *force majeure* clause, a party could be exempt from liability under Article 79 [*Iron molybdenum case*].
94. In the said case, the merits of the case did not fall into either the *force majeure* clause or Art. 79, but the mere fact that the court applied the clause and the Article separately to find out the liability of the party constitute enough evidence that *force majeure* clause did not derogate the application of Art. 79.

C. By the virtue of Art. 79 CISG, Claimant can invoke its right to exemption of liability from the new tariff.

95. Claimant is exempted from the tariff as a result of Art. 79, as the tariff was an impediment beyond Claimant's control **(1)**. Furthermore, the newly imposed tariff was not a normal risk of commercial activities **(2)** and Claimant cannot be expected to have taken the tariff into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences **(3)**.

(1) The newly imposed tariff was an impediment beyond control.

96. There have been claims that a change in financial aspect of a contract, especially where there is a change in the cost of performance, should be able to exempt a party from liability [*Tomato concentrate case*; *Iron molybdenum case*; *Chinese goods case*].

97. While it was clear that several courts have expressly stated that Parties are deemed to assume the risk of market fluctuations, the newly imposed tariff was not a result of a regular market fluctuations. It was instead a government intervention which was beyond both Parties' expectation. [*Cl. Ex. 6*; *Notice of Arb.* ¶ 10].

98. The tariff was not a normal risk of commercial activities as set out in the Digest. While it is normal for the market prices to fluctuate in international trade, a sudden increase of tariff which came out of the blue is not. Thus, the tariff was an impediment.

99. Consequently, the tariff was beyond Claimant's control. The tariff was a result of the government's action, which Claimant have no influence on nor the ability to bar. There were decisions which found that governmental regulations is an impediment beyond control [*Russian Tribunal 1997*; *Coal case*]. Therefore, the tariff was an impediment beyond the control of Claimant.

(2) The tariff could not have been taken into account at the time of the conclusion of the contract.

100. Claimant could not have known or taken into account that the government would be imposing such a tariff. Any reasonable man, or even to the informed circles, as claimed by Peak Business News [*Cl. Ex. 6*], could not have anticipated such a tariff.

101. Additionally, the tariff was not in existence at the time of the conclusion of the contract. The sale contract was already concluded and Claimant had already delivered two of the three deliveries when both Parties became aware of and acknowledge the new tariff. As a result, there was no way that Claimant would have taken into account of the tariff.

D. Claimant can claim reimbursement from the paid tariff, as a further relief in accordance with CISG Art. 7(2) by the general principles on which it is based.

102. Claimant's performance in the contract became extraordinarily burdensome as a result of the newly imposed tariff which was impediment beyond control. Because of this hardship under Art. 79, Claimant must be provided with a relief [*Garro*].

103. While Art. 79 governs the situation regarding impediment, it did not, however, provide relief under its own terms. Thus, this gap must be filled with CISG Art. 7(2) [*Garro* ¶34] by the general principles on which it is based **(1) (2) (3) (4) (5)**.

(1) Claimant is entitled to reimbursement under the principle of loss mitigation in the sense of CISG Art. 77.

105. Although Art. 77 contains a rule regarding the reduction of damage award resulting from the loss mitigation by which the aggrieved party failed to perform, the general principle of mitigation of damages is still a general principle upon which the CISG is based on [*Agricultural products case; Food products case; Al palazzò case*].

106. There is an obligation stemming from Art. 77 of the CISG for a party claiming the damages to mitigate the loss, as far as reasonable, to avoid the damages to the other party. This obligation is often referred to as the 'most important qualification on an injured party's recovery of damages' [*Morrissey/Joseph/Graves* 286].

107. In the present case, Claimant paid the tariff as a mean to mitigate the loss and damages to the Respondent. Respondent's intention was clear that the need the doses urgently [*Cl. Ex. 8*]. Knowing that Respondent needed the doses, Claimant paid the tariff, in good faith, even before the agreement has been met, in order to ensure that the semen was shipped in time of Respondent's needs. This action fulfilled the obligation of the Claimant regarding recovery of damages in the sense of Art. 77 of CISG.

108. Since Claimant is exempted from the tariff and had mitigated the loss as a way to avoid the damages to Respondent, Respondent must returned the money that Claimant had paid for the timely delivery of the semen.

(2) Claimant is entitled to reimbursement under the principle of *equitable estoppel*

109. Decisions have held that estoppel is one of the general principles which CISG was based on [*Russian Tribunal 1999; Surface protective film case; Rolled metal sheets case*]. As a result, the principle of estoppel can be used to fill the gap of relief under Art. 79. Claimant relied on

Respondent's promise and paid the tariff **(a)**. Thus, claimant can claim the payment under equitable estoppel **(b)**.

(a) Claimant had relied on the promise of Respondent, constituting equitable estoppel

110. In the phone call on the 21 January [Cl. Ex. 8; Resp. Ex. 4], Mr. Shoemaker, who act in the stead of Respondent, emphasized the fact that Respondent is interested in a long-term relationship and planned to buy 50 doses from Claimant's other horse, in order to persuade Claimant to paid the tariff in order for a timely delivery of the third delivery.
111. Mr. Shoemaker even stressed that in his affidavit [Resp. Ex. 4] that they need the third delivery on time because it was near the start of breeding season. Mr. Shoemaker knew that in order to ensure the delivery, he must not reject Claimant's request outright.
112. Claimant had relied on the promise of Respondent to establish a long-term relationship and to find an agreement on the price, and had authorized the payment of the tariff. This constitutes an act of reliance, which allows Claimant to apply equitable estoppel to Respondent [Uçaryulmaz], which is "binding in equity in much the same way that consideration operated at law" [Guoqing p.7].

(b) Claimant is entitled to the payment as a result of equitable estoppel

113. After the payment of the tariff, Respondent denied the opportunity to agree on the new price and on the paid tariff [Cl. Ex. 8], constituting a contradictory to what Mr. Shoemaker said, which Claimant had relied on [Cl. Ex. 8].
114. As a result, Claimant is entitled to invoke the principle of equitable estoppel, which aims to "protect one party from being harmed as a result of the other party's contradictory deeds, statements or promises," [Uçaryulmaz], against Respondent, to pay for the paid tariff.

(3) Claimant is entitled to reimbursement under the principle of good faith

115. It has been held that the general principle of *good faith* is applicable via Art. 7(2) [Broadcasters case; Fresh-Life case; Metal ceiling materials case; Beer case]. Additionally, the principle of *good faith* allows a payment of damage resulting from a conduct which contradicts the principle of good faith in international trade [BRI Production case].
116. Claimant knew that Respondent needed the doses in time via the telephone call from Mr. Shoemaker. As a result, Claimant paid the tariff in good faith, even if the payment of tariff was not the responsibility of Claimant, in order for the delivery to be on time for

- the benefit of Respondent, which any reasonable man who wants to, as the Respondent had asserted, establish a long-term relationship [*Cl. Ex. 3; Cl. Ex. 8*] would have done.
117. Since Claimant paid the tariff in good faith for the benefit of Respondent, Respondent should, in return, return the paid tariff to the Claimant, in good faith.
- (4) Claimant is entitled to reimbursement under the principle of Costs of one's own obligations.**
118. In [*Machines, devices and replacement parts case*], the court held that the Convention is based upon the principle pursuant to which "each part has to bear the costs of its obligation. As a result, this principle may be used to fill the gap of CISG under Art. 7(2) [*Digest 2016 p.45 ¶ 30*]
119. Since the tariffs were an unforeseen event which made the contract more onerous, in the sense of Clause 12 of the Sale Agreement [*Cl. Ex. 5*], Claimant is not responsible for the tariffs.
120. Additionally, the orally concluded DDP clause of the contract, when interpreted with Art. 8 of the CISG to reflect the subjective intent of the Parties [*Hannwa case; Machine for repair of bricks case*], provided that the DDP clause was only to make the shipment more feasible as a result of Claimant's experience in the shipment. It did not impose the obligation of an unexpected tariff on Claimant. Claimant clearly stated in [*Cl. Ex. 4*] that Claimant is not willing to take any risks associated with changes in customs regulation or import restriction.
121. As a result, the payment of any changes in customs or new tariff is Respondent's obligation, and Respondent must bear the cost of its own obligation under the principle. Therefore, Claimant is entitled to claim the payment from Respondent.
- (5) Claimant is entitled to reimbursement under the principle of simultaneous exchange of performance.**
122. It has been held that the principle of simultaneous exchange of performance underlines the Convention [*Recycling machine case; Agricultural products case*].
123. The principle of simultaneous exchange of performance requires both Parties to render their performances simultaneously. The principle contains an exception that if the Parties have agreed on a different order of performance, *exceptio non adimpleti contractus* may be invoked [*Trans-Lex*].
124. In the present case, there was no such agreement that would allow Respondent to withhold the performance of paying for the tariff. Respondent specifically agrees and

understands that no semen will be shipped until all fees have been paid [*Cl. Ex. 5*], meaning that the order of performance was for the Respondent to pay the fees before the shipment.

125. However, since the unexpected imposition of the tariff, Claimant acted in good faith and authorized the shipment before the payment. Thus, claimant had performed its part. However, after the shipment, Respondent refuse to perform its own obligation, which is to pay for the tariff, constituting an act that is contrary to good faith under this principle [*Trans-Lex*]. As a result, Respondent must pay what it owed to Claimant.

IV. Alternatively, Claimant is entitled to the payment from price adaptation under UNIDROIT.

126. Since the UNIDROIT is applicable to this case **(A)**, Claimant is entitled to the payment which resulted from the adaptation of the price under the UNIDROIT principles **(B)**.

A. UNIDROIT is applicable to this contract.

(1) The governing law allows the application of UNIDROIT principles.

127. It is written in the contract that the sales contract between Claimant and Respondent shall be governed by the law of Mediterraneo and the United Nations Convention on Contracts for the International Sale of Goods [*Cl. Ex. 5*]. Apart from that, it is undisputed that the law of Mediterraneo is a verbatim adoption of the UNIDROIT principles [*Proc. Ord. 1 ¶ III(4)*]. Thus, the UNIDROIT principle regarding *hardship* can be invoked by CLAIMANT through the Mediterraneo law.

(2) UNIDROIT can be used to fill in the gap of CISG pursuant to CISG Art. 7(2).

128. Additionally, the UNIDROIT principle can be used to fill in the gap of CISG. While it had been deemed unlikely that the UNIDROIT principle can be used to completely replace CISG, it is possible to use the UNIDROIT principle as a mean of interpreting and supplementing CISG [*Bonell*], as can be seen in [*Chemical fertilizer case; Rolled metal sheets case; Electrical appliances case*].
129. The UNIDROIT principle of *hardship* is similar in context to the principle of impediment beyond control in the sense that it can be used to put “meat on the barebones” [*Liu*] of CISG [*Gotanda*]. Since the CISG did not directly address the consequence of impediment under Article 79, the principle of *hardship* in the UNIDROIT can be used as a gap filler UNDER Art. 7(2) of the CISG [*Ziegel*].

B. Claimant has the right to claim for the payment from the adaptation of the price.

130. Under the UNIDROIT, when there is a supervening circumstances which affects a party in performing its obligation, the affected party should be able to excuse themselves from such obligation [*Ziegel*]. The section of *hardship* in UNIDROIT determines such circumstances, which Claimant has the right to invoke **(1)**. Additionally, Claimant performed its obligation even if the performance was more onerous to Claimant **(2)**. Thus, Claimant can invoke price adaptation pursuant to Art. 6.2.3 **(3)**.

(1) There was *hardship* in the meaning of Article 6.2.2 of the UNIDROIT.

131. The newly imposed tariff fundamentally alters the equilibrium of the sale contract **(a)**. The tariff was imposed and became known to Claimant after the conclusion of the contract **(b)**. Claimant could not reasonably had taken the sudden imposition of the tariff into account at the time of the conclusion of contract **(c)**. It is impossible for Claimant to control such tariff **(d)**. Claimant never assumed the risk of the imposed tariff **(e)**.

(a) The newly established tariff fundamentally alters the equilibrium of the contract

132. The tariff alters the equilibrium of contract as it directly affects the obligation of the Claimant to deliver the goods. Claimant had to pay for the unexpected tariff, resulting in an increase of Claimant's performance of the contract. Even if Claimant had already partially rendered its performance in the form of the first and the second shipment, the tariff still affects the shipment yet to be delivered, thus constituting a ground for Claimant to invoke the provision of hardship in UNIDROIT [*UNIDROIT Art. 6.2.2*].

133. Since the delivery must be made with haste, in order to satisfy Respondent's urgent needs of the dose, in addition with the fact that Respondent cannot authorize the money on the shipment date, Claimant paid the tariff [*Cl. Ex. 8*]. Thus the cost of Claimant's performance was increased because of the newly imposed tariff.

134. Apart from that, the tariff destroyed Claimant's profit margin [*Cl. Ex. 5*]. Thus, the value that Claimant received from the contract had diminished, constituting an alteration of the fundamental equilibrium of the contract.

(b) The event occurred or became known to the Claimant after the conclusion of the contract;

135. The newly imposed tariff was made aware to Claimant on January, 2018 [*Cl. Ex. 7*], which was long after the frozen semen sale contract had been concluded [*Cl. Ex. 5*]. As a result, Claimant had not known

(c) The event could not reasonably have been taken into account by Claimant at the time of the conclusion of the contract;

136. Peak Business News [*Cl. Ex. 6*] stated that even the informed circle could not have anticipated such a tariff. It was known between the Parties of how the governments had always follow the system of free trade. As a result, any reasonable man could not have predicted such a sharp turn on the regulations.

(d) The tariff was beyond the control of Claimant; and

137. The tariff was a result of government's policies, where both government tried to retaliate each other. Since Claimant is not a part of any of the government, the tariff was beyond the control of Claimant.

(e) Claimant did not assume the risk of the new tariff.

138. Claimant did not assume the risk of a sudden imposition of tariff on agricultural products. To specify, when Respondent offered that Claimant deliver the goods base on the basis of DDP [*Cl. Ex. 3*], Claimant explicitly respond that it did not willing to take over any risks associated with changes in customs regulation or import restrictions.

(2) Claimant performed its obligation under the contract even if the performance became more onerous pursuant to Art. 6.2.1

139. While the tariff had made Claimant's performance became more onerous, Claimant paid the tariff anyway, respecting the principle of *pacta sunt servanda* which underlies in Art. 6.2.1 in good faith. Thus the provisions of hardship can be invoked.

(3) As a result, Claimant is entitled to the payment resulting from the adaptation of the price.

140. Since there was hardship, Claimant requested a renegotiation pursuant to Art. 6.2.3 of the UNIDROIT **(a)**. The renegotiation resulted in Respondent bearing the cost of the tariff **(b)**.

(a) Claimant had requested a renegotiation by contacting Respondent without undue delay.

141. After being informed of the new tariff, Claimant requested renegotiation without undue delay [*Cl. Ex. 7, 8*]. Claimant, who was disadvantaged as a result of the tariff, had indicate the ground of renegotiation to Respondent. Thus, Claimant fulfilled its obligation pursuant to Art. 6.2.3 (1). Since Claimant did not failed to comply with the requirements

of Art. 6.2.3 (1), it can be a proof that the hardship actually existed and affecting the performance [Ziegel].

142. Additionally, while requesting for renegotiation, Claimant did not withhold its performance pursuant to Art. 6.2.3 (2).

143. The request for renegotiation from had been in good faith, as Claimant showed that it was essentially affected by the hardship, and that the renegotiation is not a tactical maneuver [UNIDROIT Art. 6.2.3], as Claimant still performed its obligation despite the increase burden to ensure that Respondent had gotten its doses on time [Cl. Ex. 8].

(b) There was a renegotiation between Claimant and Respondent which resulted in the entitlement of payment to Claimant.

144. The telephone call between Ms. Napravnik and Mr. Shoemaker [Cl. Ex. 8] is sufficient to be asserted as a renegotiation between Claimant and Respondent regarding the imposed tariff. The conversation was enough to constitute a renegotiation. The renegotiation resulted in Respondent bearing the obligation of the payment of the newly imposed tariff. Since Respondent refused to pay for the tariff as any reasonable business person who honor a contract would have done, Claimant is entitled to the payment requested in this arbitration.

PROCEDURAL REQUESTS

Counsel, on behalf of Claimant, respectfully requests the Tribunal:

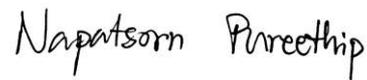
1. To decide that it has jurisdiction to determine the dispute and the power to adapt the contract;
2. To allow Claimant's submission of evidence from the other arbitration

PRAYER FOR RELIEF

Counsel, on behalf of Claimant, respectfully requests the Tribunal to order Respondent to pay Claimant an amount of tariffs of 1,250,000 US\$ or any other amount as deemed appropriate

(signed)


Intouch Siriwallop


Napatsorn Pureethip


Phocharaphol Yingamphol


Sirinnaree Ongsakul



Certificate and Choice of Forum
To be attached to each Memorandum

I Napatsorn Pureethip, on behalf of the Team for Chulalongkorn 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 Chulalongkorn University

Name Napatsorn Pureethip

Signature Napatsorn Pureethip