SIXTEENTH ANNUAL WILLEM C. VIS (EAST)

INTERNATIONAL COMMERCIAL ARBITRATION MOOT

31 MARCH TO 7 APRIL 2019, HONG KONG SAR

MEMORANDUM FOR RESPONDENT

NORTHWEST UNIVERSITY OF POLITICAL SCIENCE AND LAW

ON BEHALF OF	**AGAINST**
Black Beauty Equestrian	Phar Lap Allevamento
2 Seabiscuit Drive	Rue Frankel 1
Oceanside	Capital City
Equatoriana	Mediterraneo
RESPONDENT	**CLAIMANT**

COUNSEL FOR RESPONDENT

JIACHEN LIU · HUAIXUAN LIU · HUI NI

JIAWEN WANG · JIAYUAN YAO · GUOLONG CHEN

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TABLE OF ABBREVIATIONS

ABBREVIATIONS	EXPLANATIONS
§/§§	Section/Sections
¶ /¶¶	Paragraph/Paragraphs
ANoA	Answers to Notice of Arbitration
Art.	Article(s)
CCMU	Claims Commission (Mexico and Untied States)
cf.	*confer/conferatur* (Latin for "compare")
CIETAC	China International Commercial and Trade Arbitration Centre
CISG	United Nations Convention on Contracts for International Sales of Goods (1980)
Cl. Ex.	CLAIMANT's Exhibits
DAL	Danubian Arbitration Law
DCL	Danubian Contract Law
e.g.	*exempli gratia* (Latin for "for example")
et al.	*et alia* (Latin for "and others")
et seq.	*et sequens* (Latin for "and the following")
ff.	and the following pages
fn./fns.	Footnote/Footnotes
HKIAC	Hong Kong International Arbitration Centre
HKIAC 2018	2018 HKIAC Administrated Arbitration Rules
i.e.	*id est* (Latin for "that is")
IBA	International Bar Association
IBA Rules	IBA Rules on the Taking of Evidence in International Arbitration (2010)

ibid.	*ibidem* (Latin for "in the same place")
ICAC	International Commercial Arbitration and Conciliation
ICC	International Chamber of Commerce
ICSID	International Centre for Settlement of Investment Disputes
IFMC	ICC Force Majeure Clause
infra	*infra* (Latin for "below")
IUSCT	Iran-Untied States Claims Tribunal
LCIA	The London Court of International Arbitration
LCIA Rules	LCIA Arbitration Rules (2014)
MAL	Mediterranean Arbitration Law
MCL	Mediterranean Contract Law
Model Law	UNICTRAL Model Law on International Commercial Arbitration 1985 (with amendments as adopted in 2006)
NAFTA	North America Free Trade Agreement (1994)
NoA	Notice to Arbitration
p./pp.	Page/Pages
PCA	Permanent Court of Arbitration
PECL	Principles of European Contract Law (2002)
PICC	UNIDROIT Principles of International Commercial Contracts (2016)
Pmbl.	Preamble
PO1	Procedural Order No. 1
PO2	Procedural Order No. 2
Resp. Ex.	RESPONDENT's Exhibits
SHH	Schiedsgericht der Handelskammer Hamburg

SIAC	Singapore International Arbitration Centre Rules (2016)
Someone (Date)	Letter by *Someone* (Date)
supra	*suprā* (Latin for "above")
Tulane Memo	Memorandum for Claimant (Tulane University Law School)
UNCITRAL	United Nations Commission on Trade Law
UNIDROIT	International Institute for the Unification of Private Law
UNRT	UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (2014)
v.	*Versus* (Latin for "against")
WTO	World Trade Organization

TABLES OF AUTHORITIES

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CITED AS	FULL CITATION
CISG	United Nations Convention on Contracts for International Sales of Goods (1980)
DAL	Danubian Arbitration Law
DCL	Danubian Contract Law
DSU	Dispute Settlement Understanding of WTO Agreements (1994)
HKIAC 2018	HKIAC Administrated Arbitration Rules (2018)
IBA Rules	IBA Rules on the Taking of Evidence in International Arbitration (2010)
LCIA	LCIA Aribitration Rules (2014)
MAL	Mediterranean Arbitration Law
MCL	Mediterranean Contract Law
Model Law	UNICTRAL Model Law on International Commercial Arbitration 1985 (with amendments as adopted in 2006)
NYC	Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)
PECL	Principles of European Contract Law (2002)
PICC	UNIDROIT Principles of International Commercial Contracts (2016)
SIAC	Singapore International Arbitration Centre Rules (2016)
UNRT	UNICTRAL Rules on Transparency in Treaty-based Investor-State Arbitration (2014)

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Case No. 1:10-cv-12054
Cited as: *Insurance Company Case*
Cited in: ¶74

UNITED STATES — Lunde *v.* Batchelder
Supreme Court of Vermont (2015)
Case No. 125 A.3d 903
Cited as: *Lunde Case*
Cited in: ¶74

UNITED STATES — Raw Materials Inc. *v.* Manfred Forberich GmbH & Co., KG
U.S. District Court, Northern District of Illinois, East. Div. (2004)
Case No. 03 C 1154
Cited as: *Rail Case*
Cited in: ¶120

UNITED STATES — MCC-Marble Ceramic Center, Inc. *v.* Ceramica Nuova D'Agostino S.p.A

U.S. Circuit Court of Appeals (11th Circuit) (1998)
Case No. 97-4250; CLOUT Case No. 222
Cited as: *MCC Case*
Cited in: ¶¶82, 83, 86

UNITED STATES

Hanwha Corporation *v.* Cedar Petrochemicals, Inc.
U.S. District Court, Southern District of New York [Federal Court of 1st Instance] (2011)
Case No. 09 Civ. 10559 (AKH)
Cited as: *Hanwha Case*
Cited in: ¶83

IV. ARBITRAL AWARDS

INSTITUTION	FULL CITATION
CCMU	Walter H. Faulkner *v.* United Mexican States (1926) Cited as: *Faulkner Case* Cited in: ¶38
CCMU	National Paper and Type Co *v.* United Mexican States (1928) Cited as: *NPT Case* Cited in: ¶38
CIETAC	German Seller *v.* Chinese Buyer (2005) Case No. CISG/2005/05; CLOUT Case No. 1118 Cited as: *Heater Case* Cited in: ¶43
ICC	Bulgarian Seller *v.* Greek Buyer (1999) Case No. ICC Case 8574 of 1999 Cited as: *Certain Goods Case I* Cited in: ¶37
ICC	Seller D (Switzerland) *v.* Buyer S (Italy) (2000) Obergericht [Appellate Court] des Kantons Thurgau Case No. 10329 Cited as: *Industrial Product Case* Cited in: ¶51
ICC	ConocoPhilips *v.* Venezuela (2007) Case No. ARB/07/30 Cited as: *ConocoPhilips Case* Cited in: ¶82
ICC	United States Buyer *v.* Italy Seller Court of Arbitration of the International Chamber of Commerce (2003) Case No. 11849 Cited as: *Fashion Products Case* Cited in: ¶52
ICSID	Libananco Holdings Co. Limited *v.* Republic of Turkey

	(2013) Case No. ARB/06/8 Cited as: *Libananco Case* Cited in: ¶52
ICSID	Devincci Salah Hourani *v.* Republic of Kazakhstan (2014) Case No. ARB/13/13 Cited as: *Devincci Case* Cited in: ¶52
ICSID	Caratube International Oil Company LLP *v.* The Republic of Kazakhstan (2014) Case No. ARB/08/12 Cited as: *Caratube Case* Cited in: ¶¶50, 74
IUSCT	Robert R. Schott *v.* The Islamic Republic of Iran (1990) Case No. 474-268-1 Cited as: *R. Schott Case* Cited in: ¶38
IUSCT	Uniterwyk Corp. *v.* The Islamic Republic of Iran (1988) Case No. 365-381-1 Cited as: *Uniterwyk Case* Cited in: ¶38
IUSCT	Dadras International, Per-Am Construction Corporation *v.* The Islamic Republic of Iran, Tehran Redevelopment Company (1996) Case No. 567-213/215-3 Cited as: *Dadras Case* Cited in: ¶56
IUSCT	INA Corp *v.* The Islamic Republic of Iran (1985) Case No. 161 Cited as: *INA Case* Cited in: ¶61
NAFTA	Methanex Corporation *v.* United States of America (2004) Cited as: *Methanex Case*

	Cited in: ¶¶51, 52
PCA	Yukos Universal Limited (Isle of Man) *v.* The Russian Federation (2006) Case No. AA 227 Cited as: *Yukos Case* Cited in: ¶¶50, 51
TRIBUNAL DE JUSTIÇA DO RIO GRANDE DO SUL	Prakasa Indústria e Comércio de utilitades do lar Ltda *v.* Mercomáquinas Insdústria Comércio e Representações Ltda Tribunal de Justiça do Rio Grande do Sul (2009) Case No. 70025609579 Cited as: *Electro-Erosion Machine Case* Cited in: ¶¶86

STATEMENT OF FACTS

1. Phar Lap Allevamento ("CLAIMANT"), registered and located in Capital City, Mediterraneo, operates a stud farm which is proficient in business relevant to horses, and additionally offers frozen semen of its champion stallions for artificial insemination in breeding season.

2. Black Beauty Equestrian ("RESPONDENT"), in Oceanside, Equatoriana, is famed for its broodmare lines that have resulted in a number of world champion show jumpers and international dressage champions.

3. On **21 March 2017**, RESPONDENT cordially conveyed its interest in importing 100 doses frozen semen of Nijinsky III. Three days later, on **24 March 2017**, CLAIMANT expressed its consentience to supply RESPONDENT with 100 doses of frozen semen of Nijinsky III along with its conditions including the price, the instalment of delivery and the stipulation of resale, notwithstanding the quantity surprised it.

4. RESPONDENT negotiated further with CLAIMANT on **28 March 2017** that they would insist for this contract on a delivery on the basis of DDP given the urgency of the delivery and greater experience in the shipment of frozen semen of CLAIMANT, at the same time, suggested submitting jurisdiction in the court of Equatoriana under the law of Mediterraneo. After an internal discussion, CLAIMANT accepted on **31 March 2017** to adopt the delivery DDP upon RESPONDENT's request. CLAIMANT also suggested a hardship clause be included in the contract and opted to submit to the jurisdiction of arbitration in Mediterraneo.

5. On **10 April 2017**, RESPONDENT proposed its wish for an arbitration agreement which was governed by the law of Equatoriana and the law of in that country. CLAIMANT consented to an arbitration in a neutral country (Danubia) which is governed by the law of Mediterraneo on **11 April 2017**.

6. Both Parties' representatives were severely injured in a serious car accident on **12 April 2017**, leading to the change of both Parties' representatives. Without the explicit records concerning hardship clause as well as applicable law, both Parties' representatives, thus, comprehended aforementioned two pivotal factors from the aspect of the mutual interests and long-term cooperation.

7. Both Parties signed the contract of FROZEN SEMEN SALES AGREEMENT in Mediterraneo on **6 May 2017**.

8. CLAIMANT sent the first and second shipment of 25 doses frozen semen in succession on **20 May 2017** and **3 October 2017**.

9. The Government of Equatoriana announced to impose a tariff of 30 percent upon all agricultural goods from Mediterraneo as a response to the recent restriction imposed by the newly elected President of Mediterraneo. Thereafter, CLAIMANT contacted RESPONDENT urgently on **20 January 2018** aiming to reach a remuneration by insinuating that the last shipment would not be authorised if RESPONDENT did not accept its request, which can be treated as a threat.

10. After a thorough enquiry concerning the issue, on **21 January 2018**, RESPONDENT submitted that they had made clear during the contract negotiation that the timely delivery is of pivotal significance and expressed explicitly that the DDP chosen meant that all risks had to be borne by CLAIMANT.

11. The CLAIMANT delivered the remaining 50 doses on **23 January 2018**, before an agreement on the new price had been reached.

12. Contrary to CLAIMANT's insinuations, RESPONDENT did not consent to any adaptation following CLAIMANT's request in January 2018. Mr. Shoemaker, the representative of RESPONDENT, made clear in his telephone conversation that his understanding of the contract was that CLAIMANT had to bear the costs but that he would verify that with the persons involved in drafting. Mr. Shoemaker did not declare any consentience to the CLAIMANT's request.

13. CLAIMANT informed Arbitral Tribunal on **2 October 2018** that there is another case of RESPONDENT with one of its customers under the HKIAC Rules, where RESPONDENT claimed that they had been affected by the unforeseen tariff of 25% imposed by the president of Mediterraneo and wanted to adapt the contract. CLAIMANT tried to obtain the Partial Interim Award through a company which has a doubtful reputation.

14. RESPONDENT denounced CLAIMANT on **3 October 2018** that the submission they will submit is either obtained by a breach of confidentiality or a hack of RESPONDENT's computer system and shall not be applicable in the arbitration.

SUMMARY OF ARGUMENTS

PART ONE

15. Respondent asserts that the arbitration agreement is governed by the law of Danubia instead of Mediterranean law. Furthermore, the Tribunal has no power to adapt the contract under the arbitration clause in line with Danubian Law. Even if the Tribunal finds Mediterranean law to be the proper law, the Tribunal still lacks legitimate competence to adjust the contract.

PART TWO

16. Arbitral Tribunal has the power to decide the evidentiary issue raised by both Parties in accordance with Art. 22 HKIAC 2018. Examining this evidentiary issue, Arbitral Tribunal may take admissibility, relevance, materiality and weight of the evidence into account. The illegally obtained evidence *per se* from a company is not admissible, thereby being excluded by the Tribunal under Art. 22.2 HKIAC 2018. Additionally, Claimant cannot invoke UNRT to submit evidence by justifying the nature of this evidence. Even if UNRT can be invoked, adaptation of contract does not fulfil public interests. Moreover, the Partial Interim Award is not subject to the doctrine of issue preclusion.

PART THREE

17. Arbitral Tribunal has no basis to adapt the contract and the fact that there has been no new agreement regarding the adaptation made by the Parties. Even if Arbitral Tribunal has the power to adapt the contract, Claimant is also not entitled to the payment of US$ 1,250,000 from an adaptation of the price under Clause 12 of the contract. Alternatively, CISG should not be applied to adapt the contract either.

ARGUMENTS

PART ONE: THE TRIBUNAL HAS NO POWER TO ADAPT THE CONTRACT UNDER THE ARBITRATION AGREEMENT

18. To decide whether Arbitral Tribunal has the power to adapt the contract, the sphere of the power granted to it by the Parties shall be scrutinised. The Tribunal shall interpret the arbitration agreement according to the governing law of the arbitration clause (hereinafter "proper law") to decide whether it has been authorised the power of contractual adjustment.

19. Contrary to Claimant's assertions, Respondent contends that there exists neither Tribunal's jurisdiction nor power over contractual adaptation under the Parties' arbitration agreement. To prove that, Respondent alleges that the arbitration agreement is governed by the law of Danubia instead of Mediterranean law **(I.)**. In line with Danubian Law, the Tribunal has no power to adapt the contract under the arbitration clause **(II.)**. Even if the Tribunal finds Mediterranean law to be the proper law, the Tribunal still has no legitimate competence for the adjustment of the contract **(III.)**.

I. THE ARBITRATION AGREEMENT IS GOVERNED BY THE LAW OF DANUBIA INSTEAD OF THE LAW OF MEDITERRANEO

20. On 6 May 2017, the Parties concluded the written sales contract with an express choice of the place of arbitration, Danubia, but without an express reference to the proper law [*Cl. Ex. 5*]. Claimant either purports that the Parties chose the proper law by choosing the applicable law to the main contract [*Tulane Memo, ¶¶9-14*] or alleges that the host theory or doctrine of the most significant relationship compels the application of Mediterranean law as the proper law [*ibid., ¶¶15-21*]. However, both mindsets of arguments fail due to distorting and concealing the facts and misinterpreting the underlying jurisprudence.

21. The three-stage test, the prominently dominant rule to determine the proper law, follows the logic that "(i) whether the parties expressly chose the law of the arbitration agreement; (ii) whether the parties made an implied choice of law for the arbitration agreement; and (iii) in the absence of express or implied choice, the system of law with which the arbitration agreement has the closest and most real connection." [*Sulamérica Case*]. In this case, absent an express choice of the proper law, Respondent submits that the Parties have impliedly selected the law of Danubia as the proper law, and under such circumstances, the host theory cannot be applied to ascertain the proper law because the party autonomy prevails **(A.)**. In

addition, by stark contrast to Claimant's submission, in praxis, the law that has the closest and most real connection in the dispute at hand is the law of Danubia **(B.)**.

A. The Parties have implicitly chosen the law of Mediterraneo as the proper law

22. In absence of an explicit choice [*ANoA, ¶14*], the proper law should be deemed in accordance with the Parties' implied mutual assent [*Lew, pp. 101, 412-414; Redfern/Hunter, p. 160; Sulamérica Case*]. In sharp contrast to the Claimant's allegations, Respondent has never subjectively known Claimant's intent [*Tulane Memo, ¶¶10-11*] to position Mediterranean law as the proper law in Clause 15 [*Cl. Ex. 5*], let alone to accept [*ibid., ¶¶12-14*] nor explicitly oppose [*ibid.*] Claimant's will to apply the law of Mediterraneo to Clause 15. In this case, Respondent's silence did not amount to the acceptance to Claimant's offer of selecting the law of Mediterraneo as the proper law for the first-time cooperation [*Art. 18 (1) CISG; Elinette Case; Hughes Case*]. This is because subsequent to Respondent's proposal to select the law of Equatoriana as the proper law [*Resp. Ex. 1*], Claimant largely accepted Respondent's offer merely with an amendment of the place of the arbitration without any rejection to the proper law [*Resp. Ex. 2*]. Under such circumstances, a reasonable person of the same kind as Respondent was not reasonably anticipated to be aware of Claimant's intention to choose Mediterranean law to govern the arbitration agreement [*Art. 8 CISG; StencilMaster Case; Surface Protective Film Case*].

23. On the other hand, Claimant made Respondent clear that they have an "internal policy according to which consent to a contract submitted to foreign law or providing for dispute resolution in the country of the counterparty requires special approval by the creditors' committee, a board in which all financing banks are included." [*Resp. Ex. 2; Tulane Memo, ¶13*]. However, Claimant has never attempted to acquire the special approval to consent from the committee because Claimant deliberately intended to subject the arbitral proceedings to a functioning judicial system of a neutral country, which is the one of Danubia [*PO2, ¶14*]. Respondent was made aware of that Claimant's intent through Claimant's proposal that it chose Danubia as a neutral jurisdiction [*Resp. Ex. 2*] and signed the Sales Agreement to accept Claimant's intent to select the neutral Danubian arbitral situs [*Cl. Ex. 5*]. Under such circumstances, the host theory [*Tulane Memo, ¶¶15-18*] should not be applied because private autonomy prevails [*Lew, pp. 101, 412-414; Redfern/Hunter, p. 160; Sulamérica Case*]. Conclusively, the Parties have reached an agreement to subject the arbitration agreement and its interpretation to the law of Danubia.

B. The doctrine of the closest and most real connection compels the application of

Mediterranean law as the proper law

24. Even if the Tribunal finds the non-existence of hereinabove implicit agreement, the Tribunal may hold upon its discretion that the doctrine of the closest and most real connection results in the application of Danubian law as the proper law [*Born, p. 479; Redfern/Hunter, pp. 160-161; CVD Case; Sulamérica Case; Firstlink Case*]. To this extent, the Parties have agreed to apply the law with the closest and most real connection as the proper law [*Tulane Memo, ¶¶19-21*]. Contrary to Claimant's conclusion under such doctrine [*ibid.*], however, Respondent submits that, in choosing an arbitral seat, the Parties impliedly chose its law governing arbitration clause absent a designation by the parties of the proper law [*Born, p. 479; Redfern/Hunter, pp. 160-161; Liukkunen, p. 156; Pilich, p. 238; Karrer, p. 861; Moody/Forsaith, p. 5; De Ly, pp. 62 et seq.; Cranes Case; Power Generation Business Case*] because the law with the closest and most real connection is the law of the arbitral seat [*CVD Case; Sulamérica Case; Firstlink Case*].

25. The fundamental rationale to explain such predominant rules of practice is that even if a state were to relinquish all control over international arbitrations taking place on its territory, it could always reinstate that control by enacting a law that reinstates whatever degree of control it seeks to exert over locally seated arbitrations [*Bermann, p. 212; Gaillard, p. 67*]. In other words, the Parties are not able to avert the control of the judicial rules and national juridical supervision or even intervention of arbitral procedures in the arbitral situs [*Art. 1 (2) DAL/MAL; Oil Case*], in particular, legitimacy of the agreement and awards [*Born, p. 1584; Redfern/Hunter, p. 172*] and the potential interim measures as well as judicial assistance conducted by the courts of the arbitral situs [*Art. 9 DAL/MAL; Born, p. 1585; Redfern/Hunter, pp. 169, 424-438*]. Hence, there must be a limit to the Parties' freedom and party autonomy does not extend to the choice of the proper law absent an explicit choice thereof [*Road-Segment Construction Case; Petrochilos,p. 105*]. Furthermore, due to the absence of any connection with either Parties or their commercial relationships [*Redfern/Hunter, p. 166; Vessel Case*], the choice of a neutral jurisdiction invests more reasonable justification to the choice of the law of the arbitral place [*Kaplan/Moser, pp. 145-146; JOC Case*].

26. Following Claimant's offer to set the neutral place of arbitration in Danubia [*Resp. Ex. 2*], where Claimant attached much importance to its neutrality [*PO2, ¶14*], the Parties incorporated the arbitral situs of Danubia into Clause 15 [*Cl. Ex. 5*]. That express choice of the place of arbitral proceedings implied to select Danubian law as the proper law under the abovementioned most-significant-relationship presumption, notably in the situation that the proceedings is conducted in a neutral place [*Born, p. 479; Lew, p. 109; Liukkunen, p. 156; Cranes*

Case; Power Generation Business Case].

27. Moreover, significantly, since Respondent's three mares in the dispute have been registered in Danubia [*Cl. Ex. 5*], by choosing the Danubian law as the proper law, there would be more feasibility and support for the potential judicial assistance, *e.g.* interim measures conducted by Danubian judicial institutions, including Dnubian courts [*Art. 9 DAL/MAL; Born, p. 1585; Redfern/Hunter, pp. 169, 424-438*], thereby assuring the efficacy and efficiency of the entire arbitral procedure [*Born, p. 401; Craig et al., ¶5.04*]. Thus, the Parties have chosen Danubian law as the proper law by selecting Danubia as the arbitral seat. In conclusion, the Parties have agreed to choose the law of Danubia governing the arbitration agreement and its interpretation.

II. IN ACCORDANCE WITH DANUBIAN LAW, ARBITRAL TRIBUNAL HAS NO POWER TO ADAPT THE CONTRACT

28. In practice, the proper law encompasses not only procedural law but also substantive law [*Redfern/Hunter, p. 175*] that deals with the formation, validity, interpretation and performance, *etc.* of the arbitration agreement [*ibid.*]. Thus, in this case, the proper law, which is Danubian law [*supra ¶¶20-27*], including its procedural and substantive rules, may be applied [*PO1, II.3, III.4; PO2, ¶¶36, 45*]. Compared with Mediterranean law, Danubian law provides a narrow interpretation of the arbitration agreement [*PO1, II.3; NoA, ¶¶15-16; ANoA, ¶16*] and requires an express conferral of the exceptional powers, including contractual adaptions, upon the Tribunal [*Art. 28 (3) DAL; ANoA, ¶13; PO2, ¶36*].

29. In the dispute at hand, not only does the governing law set forth a narrow interpretation of the agreement, but also the Parties agreed to narrow down the broad wording of HKIAC Model Clause into Clause 15 [*Cl. Ex. 5; cf. HKIAC Model Clause*]. The modification itself may not express nor imply narrowing the scope of Tribunal's power prescribed in the arbitration clause, but construed with the facts [*Advertisement Case*], *i.e.* Respondent's obvious warning and Claimant's awareness and acceptance of Respondent's intention to narrow it down [*Resp. Ex. 2; NoA, ¶16*], the restrictive nature of the Tribunal's power prescribed in Clause 15 is crystal clear.

30. On 10 April 2017, Respondent expressly warned Claimant that Respondent's initial proposal for the arbitration clause was a streamlined and narrowed version of HKIAC Model Clause [*Resp. Ex. 1*]. Compared with original HKIAC Model Clause, Respondent purposefully deleted the broad wording, *inter alia,* "or relating to" and "or any dispute regarding non-contractual

obligations arising out of or relating to it" [*ibid.; Cl. Ex. 5; cf. HKIAC Model Clause*]. Afterwards, Claimant was aware of restricted Tribunal's power offered [*NoA, ¶16*] and then accepted Respondent's offer to limit Tribunal's power by adopting exactly the same wording that Respondent proposed [*Resp. Ex. 2; Cl. Ex. 5*]. In addition, practically, courts and tribunals generally hold more limited implications of "arising out of" than "relating to" as well as "any dispute regarding non-contractual obligations arising out of or relating to it" deleted together, read with relevant negotiations [*Born, p. 1349; Pierre Case; Texaco Case; Licensing Case; Good (E) Case; Vessel Case; Flat Glass Case; X Case; Oversea Case; Printing Mach. Case; Woolcock Case, etc.*].

31. Furthermore, adhering with four corners rule, no external evidence shall be contradicted to or supplemented the final written contract [*Art. 2.1.17, 4.3 DCL; PO2, ¶45; ANoA, ¶¶16-17*]. Thus, this mandates the Tribunal solely to refer to the written agreement [*Cl. Ex. 5*]. According to Danubian law, an express conferral of the contractual adjustment to the Tribunal is required [*PO2, ¶¶36, 45; Art. 28 (3) DAL; Art. 6.2.3 (4) (b) DCL*]. However, in the agreement, there is not any clause that provides or indicates an express or implicit authorisation for the Tribunal to adjust the contract [*Cl. Ex. 5*]. Hence, because there is no clause expressly authorising the Tribunal to adapt the contract, leave alone any clause "arising out of" the contract empowers the Tribunal for relevant contract adjustment. In conclusion, under the law of Danubia, Arbitral Tribunal has no power to adapt the contract.

III. EVEN UNDER THE LAW OF MEDITERRANEO, THE TRIBUNAL STILL HAS NO JURISDICTION OVER THE CONTRACTUAL ADJUSTMENT

32. Even supposing that Mediterranean law is applicable as what Claimant desires to do, looking for the empowerment of contractual adjustment in external exhibits [*cf. PO1, II.3; ANoA, ¶16*], the only scenario that the Tribunal has been mandated to adapt the contract under Mediterranean law would only appear in the witness statement submitted by Claimant. Such a one-sided statement is obviously lack of weight of evidence **(A.)**. Furthermore, even if Respondent had the intention to adapt the contract, no mutual consent was finalised between the Parties **(B.)**.

A. The only possibility that Arbitral Tribunal has been authorised to adapt the contract alleged by Claimant is lack of credibility

33. Claimant purports that the communications and conducts between the Parties show their mutual intention that the Tribunal would have the power to adapt the contract [*Tulane Memo,*

¶¶22-25]. Therefore, the only possibility that Arbitral Tribunal was authorised to adapt the contract may be only emerged from the witness statement submitted by Claimant [*Cl. Ex. 8*]. However, such an ambiguous and unilateral evidence fails to meet the requirements set forth in Art. 4.5 IBA Rules, and Claimant shall accordingly bear higher standard burden of proof.

34. HKIAC 2018 prescribed that each party shall have the burden of proving the facts relied on to support its claim [*Art. 22.1 HKIAC 2018; Moser/Bao, p. 271*]. The more critical and more startling the proposition that a party seeks to prove, the more rigorous Arbitral Tribunal will be in requiring that proposition to be fully established, which means that the stricter burden of proof is imposed on the party who submitted the evidence [*Redfern/Hunter, p. 379*].

35. While Arbitral Tribunal is not required to apply any established rules of evidence, it is highly suggested that IBA Rules may apply in the HKIAC arbitration, for IBA Rules of Evidence are "commonly adopted and referred to in HKIAC arbitration" [*Moser/Bao, p. 271*]. In accordance with Art. 4.5 IBA Rules, each witness statement shall contain the relationship between the party and the witness, as well as a full and detailed description of the facts. In the view of that, a witness statement must provide a detailed recitation of the particular facts to which a party is asserting [*O'Malley, p. 119*], which is commonly adopted by international arbitrations [*ibid.; ASA, pp. 314-333*].

36. In this case, the probability that Arbitral Tribunal has been empowered to adapt the contract merely materialise in the evidence-in-chief submitted by Claimant [*Cl. Ex. 8*]. What Claimant intends to prove is exceedingly contrary to the both Parties' intention as previous analysis [*supra ¶¶18-31*]. Therefore, it should be considered as an astounding and significant evidence, which requires a more stringent burden of proof for Claimant [*Art. 22.1 HKIAC 2018; Redfern/Hunter, p. 379*]. However, the witness statement only contains vague and subjective statements without any corroborating facts [*Cl. Ex. 8*], which is, undoubtedly, a failure to fulfil its burden of proof.

37. Moreover, the relationship between the Parties and the witness deserves Tribunal's attention in the arbitral proceedings as well [*Art. 4.5 (a) IBA Rules; O'Malley, p. 119*]. The corollary to this principle is that the relationship between them need to be considered by Arbitral Tribunal in weighing the evidence [*ibid.; Berger, p. 557; Certain Goods Case I*]. In the present situation, the witness, Ms. Napravnik, is one of the two lawyers who is working for Claimant [*Cl. Ex. 8*]. Taking the employment relationship between Ms. Napravnik and Claimant into account, Arbitral Tribunal should give less weight to this witness statement [*O'Malley, p. 119; Berger,*

p. 557; Redfern/Hunter, p. 392; IBA, p. 16].

38. What is more remarkable in this circumstance is that whether the contents of this witness statement are complied with the requirements that it shall meet. [*Art. 4.5 IBA Rules; O'Malley, pp. 118-119*]. Pursuant to Art. 4.5 (b) IBA Rules, witness statement shall contain a sufficient and detailed description of the facts, and the source of the witness information as to those facts [*ibid.*]. What can be only found in this witness statement is a nebulous assertion of Mr. Antley's words [*Cl. Ex. 8*]. It is generally accepted that the witness statement without any other supporting and corroborating evidence is lack of credibility along with the weight of evidence, and Arbitral Tribunal can exclude such a witness statement [*Redfern/Hunter, p. 393; O'Malley, p. 121; Born, p. 2259; Berger, p. 577; R. Schott Case; Petroleum Case; Uniterwyk Case; Faulkner Case*]. Hence, this witness statement is only a simple affirmation of legal pleadings written by counsel, which is of little probative value [*O'Malley, p. 120; Berger, p. 557; NPT Case*].

39. To sum up, since Claimant fails to accomplish its burden of proof over its allegation, and it cannot present a complete picture of the factual basis on which the statements therein are based, the only evidence which could prove that Arbitral Tribunal has been empowered to adapt the contract may be regarded as a baseless confirmation to the legal pleadings. Such an evidence produced by Claimant is lack of credibility and shall be excluded by the Tribunal.

B. The Parties has never reached a consensus of contract adjustment for it was Mr. Krone not Mr. Antley who signed the contract even if Respondent had such an intention

40. Even if Mr. Antley once suggested that Arbitral Tribunal may has the power to adapt the contract [*NoA, ¶16; Cl. Ex. 8*], since the contract is finally signed by Mr. Krone rather than Mr. Antley, it was impossible for Mr. Krone to know what Mr. Antley thought during the negotiation process [*Resp. Ex. 3*], much less that both Parties has reached an unanimity to adapt the contract because the conduct of a party shall be interpreted by that party's real intention [*Art. 4.2 MCL; Art. 8 (1) CISG; Resp. Ex. 3*].

41. Pursuant to Art. 4.2 MCL and Art. 8 (1) CISG, the conduct of a party shall be interpreted according to that party's real subjective intention once its subjective intention was known or could not be ignored by the recipient [*Kröll, pp. 145, 148; Chemical Product Case; Farm Animal Case; Computer Parts Case*].

42. Claimant alleges that both Parties has reached a common intention that Arbitral Tribunal has

the power to adapt the contract on condition of unforeseen event [*Tulane Memo, ¶23*], which Respondent "could not have been unaware" [*Tulane Memo, ¶11*]. Such a "mutual assent", however, was on the basis of the evidence-in-chief submitted by itself, which claims that Mr. Antley's words show that Respondent had the intention to empower Arbitral Tribunal to adapt the contract [*Cl. Ex. 8*].

43. However, owing to that miserable accident, the negotiation representative of both Parties has been replaced [*ANoA, ¶8; NoA, ¶8; Resp. Ex. 3*], and only Clauses 1-5, excluding authorisation clause, had been agreed by both Parties until that dreadful accident [*PO2, ¶4*]. It is Mr. Krone who represented Respondent proceeding that negotiation process and signed the contract eventually [*Resp. Ex 3; Cl. Ex. 5*]. Accordingly, the conduct of Respondent shall be interpreted by Mr. Krone's intent rather than Mr. Antley's, and Claimant should be aware of or could not have been unaware of such a situation [*Ceramic Tiles Case; Industrial Product Case; Footwear Case; Olive Stone Case; Building Material Case; Heater Case; Pork Meat Case*]. Pursuant to the witness statement submitted by Mr. Krone, it was impossible for him to have the intention that empowers Arbitral Tribunal to adapt the contract [*Resp. Ex. 3*]. Furthermore, there is no evidence proving that both Parties has reached a consensus that Arbitral Tribunal has been authorised to adapt the contract, much less Claimant also realised that no express clause about that has been written down in the contract [*Cl. Ex. 8; Tulane Memo, ¶8*].

44. To sum up, since it was Mr. Krone rather than Mr. Antley that finally signed the contract, there is no possibility that he would have authorise Arbitral Tribunal to adapt the contract pursuant to his subjective intention.

CONCLUSION TO PART ONE

45. In this case, absent an express choice of the proper law, the law of Danubia has been implicitly chosen in the current case, and the host theory is unable to justify the proper law for party autonomy prevails. Contrary to Claimant's submissions, the law with the closest and most real connection in the dispute is Danubian law. In light with the law of Danubia, the Tribunal has no power to adapt the contract. Even if the Tribunal upholds the law of Mediterranean as the proper law, the Tribunal has still not been empowered to adapt the contract for the only evidence collaborates the scenario is lack of credibility and no mutual consensus was reached between the Parties.

PART TWO: CLAIMANT IS NOT ENTITLED TO SUBMIT EVIDENCE FROM THE OTHER ARBITRATION PROCEEDINGS

46. Arbitral Tribunal has the power to decide the evidentiary issue raised by both Parties in accordance with Art. 22 HKIAC 2018 **(I.)**. Examining this evidentiary issue, Arbitral Tribunal may take admissibility, relevance, materiality and weight of the evidence into account. The illegally obtained evidence *per se* from a company is not admissible, thereby excluding by the Tribunal under Art. 22.2 HKIAC 2018 **(II.)**. Claimant cannot invoke UNRT to submit evidence by justifying the nature of this evidence. Even if UNRT can be invoked, adaptation of contract does not fulfil public interests **(III.)**. Moreover, the Partial Interim Award is not subject to the doctrine of issue preclusion **(IV.)**.

I. THE TRIBUNAL HAS THE POWER TO DECIDE THE EVIDENTIARY ISSUE

47. The evidentiary issue should be decided by the Tribunal. Art. 22.2 HKIAC 2018 stipulates that the Tribunal has the power to admit or exclude any documents, exhibits or other evidence. Some sources of rules on international commercial arbitration also admit this Tribunal's power concerning the evidentiary issue [*Art. 9.4 IBA Rules; Art. 19.2 Model Law; Art. 22.2 HKIAC 2018*].

48. Accordingly, although there are no specific rules on evidence admissibility [*PO2, ¶46*], the decision on the evidentiary issue is subject to the discretion of the Tribunal in accordance with the HKIAC 2018 and Model Law [*PO1, III.4*]. Moreover, the IBA Rules serve as persuasive authority as it is almost universally recognised to empower the Tribunal to resolve the evidentiary issue [*Art. 9.4 IBA Rules; Redfern/Hunter, p. 381*]. Therefore, the Tribunal may have full discretion to the admission of evidence with the view of discovering the whole truth with respect to each claim submitted [*Born, p. 2310*].

II. THE EVIDENCE OF ILLEGALLY OBTAINED NATURE SUBMITTED BY CLAIMANT IS NOT OF ADMISSIBILITY, RELEVANCE AND MATERIALITY

49. The Tribunal may determine the admissibility, relevance, materiality and weight of evidence [*Art. 9.4 IBA Rules; Art. 19.2 Model Law; Art. 22.2 HKIAC 2018*]. The evidence is unlawfully obtained by Claimant and such evidence should be regarded as inadmissible **(A.)**. The Tribunal may find that the evidence to be submitted by Claimant is not relevant in the present arbitration proceedings as the circumstances underlying the two cases are distinct **(B.)**. Moreover, the Tribunal may find the evidence is not material in the case at hand **(C.)**.

A. The evidence is not admissible in the present case

50. Respondent maintains that Claimant has procured the evidence from an ill-reputed company through illegal means [*PO2, ¶41*] and according to the clean hands doctrine [*Tulane Memo, ¶49; Valcke, ¶3; Smeureanu, p. 77; Caratube Case; Yukos Case*], the evidence unlawfully obtained by Claimant should be regarded as inadmissible.

51. Clean hands doctrine may be taken into account for excluding evidence by the Tribunal [*ConocoPhilips Case; Garber Case; Loughran Case; Keystone Driller Case*]. This doctrine falls into one of the basic international arbitration principles of fairness and the general duty of good faith [*Altman/Pollack, §23:14; Dupuy et al., pp. 60-62; Methanex Case*]. This doctrine means that if some forms of illegal or improper conducts were found from the party, his or her hands would be "unclean", his claims will be barred, and any loss suffered will lie where it falls [*Blair, pp. 240-245; Llamzon, p. 316; Yukos Case*]. Clean hands doctrine is adopted by arbitral tribunals to the question of admitting into evidence illegally or improperly material [*Llamzon/Sinclair, pp. 451, 509*].

52. Illegally obtained evidence violates the basic principles of justice and fairness [*Devincci Case; Methanex Case; Libananco Case*]. Moreover, some courts even maintain that any and all misfeasance that smacks injustice, such as "inequitable," "unconscionable," or deriving from a "bad motive" for benefits [*Poll, pp. 67-68; Pomeroy, pp. 432-443*] may constitute a violation of clean hands doctrine [*Keystone Driller Case; Deweese Case*]. Furthermore, if a party denies the violation of clean hands doctrine, he or she should undertake the burden of proof that the evidence is not in illegally obtained nature [*Methanex Case; Libananco Case*].

53. In this case, Claimant's conduct is in violation of clean hands doctrine. After hearing about the other arbitration, Claimant has tried multiple unlawful methods to obtain the documents. Claimant insisted on acquiring such information and submitting this evidence even after knowing the information could only be leaked through illegal means [*PO2, ¶41*], demonstrating its obvious intent to introduce illegal evidence. This improper conduct seeking benefits from illegally obtained evidence is in violation of clean hands doctrine and the Tribunal may exclude this evidence upon its discretion. Additionally, according to clean hands doctrine, it is Claimant's responsibility to undertake the burden of proof that the evidence is legally obtained and in accordance with clean hands doctrine [*ibid.*].

54. To conclude, Claimant's wrongdoing to procure the "Partial Interim Award" from a company with a doubtful reputation from illegal sources, which can yield benefits to Claimant, violates clean hands doctrine. Therefore, Arbitral Tribunal may not accept the evidence in violation of clean hands doctrine to be submitted by Claimant.

B. The circumstances in these two cases are not relevant

55. As it can be noticed in the "Partial Interim Award", the circumstances in other arbitration are not similar as those in the arbitral proceedings at hand and this evidence cannot fulfil relevance requirement set forth in HKIAC 2018 [*Art. 22.2 HKIAC 2018*].

56. HKIAC 2018 prescribes that the Tribunal has competence to determine the relevance of evidence in arbitral proceedings [*Art. 22.2 HKIAC 2018; Moser/Bao, p. 272; Tulane Memo, ¶¶34-35, 37-44*]. The term "relevance" has been defined that the evidence has a logical connection with what it purports to prove in the case [*Pilkov, p. 148; Dadras Case*] and it should be useful for the line of evidence by the requesting party in order to establish the truth of its factual allegations [*Raeschke-Kessler, p. 427; Moser/Bao, p. 274*].

57. Regarding the evidence that Claimant intends to submit, the circumstances and details in other arbitration [*PO2, ¶39*] lack the logic connection with what Claimant wants to prove and there is no relevance between them. In that arbitration, the contract precisely contains an ICC Hardship Clause 2003 and this clause directly leads to the adaptation of the contract after the unforeseen tariff [*ibid.*]. But in the present case, ICC Hardship Clause is not specifically contained in the Parties' Sales Agreement [*Cl. Ex. 5*]. Moreover, the law of one Party's place of business, which is the law of Mediterraneo, is applicable to the arbitration agreement in that arbitration, while in the present case the law of a neutral country, which is Danubian law [*supra ¶¶20-27*], is applicable to the arbitration agreement [*PO2, ¶39*].

58. Claimant may allege that there are some similarities in both arbitration such as the background of unexpected raise in tariffs and adaptation of a contract as a result [*Tulane Memo, ¶60*], however, the substance of two cases is distinct and should not be deemed as relevant [*Waincymer, p. 859*].

59. Taking the substantial differences in these two cases into account, Arbitral Tribunal is respectfully requested to find that due to the decisive circumstances influencing the adaptation of the contract are distinct, this evidence to be submitted by Claimant is not relevant to the present proceedings.

C. The evidence is not of vital materiality

60. Materiality can be assessed only with respect to the relevant evidence [*Bassiri/Draye, p. 303*; *Marghitola, pp. 52, 54; Pilkov, p. 149*] Even if Claimant's evidence has its relevance with the ongoing case, it should be deemed as a lack of materiality. The term materiality means that Arbitral Tribunal must deem it necessary that the document is needed as an element to allow complete consideration as to whether a factual allegation is true or not [*Moser/Bao, p. 274; Raeschke-Kessler, p. 427*].

61. In the present case, Claimant's evidence is only material to the particular issue and cannot mean materiality [*Born, p. 2362*]. The award which solely demonstrates Respondent's contradiction [*Langweiler (2 Oct 2018)*], which could merely be categorised as particular issue under distinct circumstances, far from "a resolution of dispute" [*Born, p. 2362; Marghitola, p. 52; INA Case*].

III. CLAIMANT SHOULD NOT BE ENTITLED TO SUBMIT EVIDENCE UNDER THE UNRT

62. Claimant cannot invoke UNRT to submit evidence as Claimant and Respondent are not eligible "Parties" within the scope of UNRT application [*Art. 1 UNRT*] **(A.)**. Even if Claimant can invoke UNRT, the present dispute is irrelevant with public interests **(B.)**. The principle of Transparency is not capable of justifying the submission of the evidence **(C.)**.

A. Claimant cannot invoke UNRT to submit evidence

63. UNRT should not be invoked to submit evidence [*Fasttrack (3 Oct 2018)*] as the Rules shall only apply to Investor-State arbitration instead of private commercial arbitration [*Salasky/Montineri, p. 2; Paulsson/Petrochilos, pp. 1-2*] and the agreement between the Parties is not equivalent to the meaning of "treaty" in Art. 1 UNRT.

64. Art. 1 UNRT stipulates the rules protect the investments or investors in Investor-State arbitration [*Park, p. 215; Art. 1 UNRT*]. "Party to the treaty" or a "State" includes, for example, a regional economic integration organization where it is a Party to the treaty [*fn. Art. 1 UNRT, p. 5*]. In addition, a "treaty" shall be understood broadly as encompassing any bilateral or multilateral treaty that contains provisions on the protection of investments or investors [*ibid.*].

65. In this dispute, both Claimant and Respondent belong to private parties instead of investors nor states in investment arbitrations. And the agreement is solely for sales in commercial area

[*Cl. Ex. 5*] not a bilateral or multilateral treaty concerning investment. Transparency is specific to investment arbitrations, and measures of this kind are not necessarily relevant to international commercial arbitration [*Ruscalla, pp. 6-7, 19*]. Conclusively, Claimant cannot invoke UNRT due to its limited scope of application.

B. Even if Claimant can invoke UNRT, issues in the case at hand do not fall into public interests

66. Claimant cannot invoke UNRT as aforementioned. Even if the Rules can be invoked, the assertions on public interests raised by Claimant fail because the issue *per se* pertains merely to private interests between two private Parties about adapting a contract [*PO1, III. 1*].

67. The meaning of public interests is compared to the welfare of a private individual or company and refers to that all of society has a stake in this government tries to promote [*Black, p. 3883*]. Elements justifying public interests include the presence of a state as a party to the arbitration and the use of public funds to defend a claim [*Feliciano II, p. 11; Buys, p. 134; Mistelis, p. 212*]. Investment arbitration involves greater public interests than commercial arbitration [*Sabater, p. 56; Teitelbaum, p. 56*] as state involvement renders several issues of public nature [*Hober, p. 139*].

68. In this case the issue concerning adaptation of a contract without any state involvement is only the welfare of two private parties and there is nothing to do with all of society to fulfil general public interests [*NoA, ¶¶18-20; ANoA, ¶¶18-21*]. Therefore, the issue does not connect with the stipulation of public interests [*Art. 1 UNRT*].

C. The principle of Transparency cannot justify the submission of the evidence

69. Claimant alleges that the principle of transparency can justify the submission of the evidence [*Fasttrack (3 Oct 2018)*] and claims that this principle is a prevailing one so as to bring about submission of the evidence from another arbitration [*ibid.*]. Respondent maintains that this principle is not able to guarantee the submission of evidence justified.

70. Although there has been some discussion on the balance between the confidentiality and transparency in international commercial arbitration, the appeal for increased transparency is far from constituting a prevailing principle [*Drahozal, pp. 79-107; Fortier, pp. 131-134; Collins, pp. 121-127*]. On the contrary, all leading arbitral institutions have recognised the

requirements of confidentiality in the international commercial arbitration by reflecting this in the related rules [*Art. 32.12 SIAC Rules; Art. 30 LCIA Rules; Art. 45 HKIAC 2018*].

71. The requirement of confidentiality is still of much importance to the participants in the international arbitration [*Mary UoL, pp. 27-28*]. In the other arbitration, those Parties have agreed on confidentiality obligation in the arbitration rules and the counterparty in that arbitration has pointed out what Claimant alleges does not reflect the reality and are taken out of the context [*Fasttrack (3 Oct 2018)*]. Both Parties in that arbitration have not agreed on the disclosure to Claimant.

72. In conclusion, the alleged principle of transparency does not outweigh the confidentiality obligation in other arbitration and cannot justify the submission of the evidence.

IV. THE PARTIAL INTERIM AWARD IS NOT SUBJECT TO THE DOCTRINE OF ISSUE PRECLUSION

73. Although the seat of arbitration, which is Danubia [*Cl. Ex. 5*], a common law jurisdiction [*PO2, ¶44*], admits the doctrine of issue preclusion [*Born, p. 3734; Nonkes, pp. 1459-1467; Drahazal, pp. 23-26; Tulane Memo, ¶63*], the Partial Interim Award in Respondent's other arbitration is not subject to the doctrine of issue preclusion [*Tulane Memo, ¶¶63-67*]. The Partial Interim Award does not necessarily decide the issue that is directly or substantially at issue in the current arbitration.

74. The doctrine of issue preclusion can be applied if: (a) it was made by a court of competent jurisdiction; (b) it is a final and conclusive decision on the merits; (c) it necessarily decided an issue that is directly or substantially at issue in the current case and (d) the current case involves the same parties or privies of those parties [*Caratube Case; Wong Case; McKithen Case; Taylor Case; Greenblatt Case; Insurance Company Case; Lunde Case*].

75. Respondent maintains these elements all at present in this arbitration should be fulfilled if Claimant alleges the doctrine of issue preclusion [*Tulane Memo, ¶¶63-67*]. Notwithstanding, some elements aforementioned cannot be fulfilled in the present case in particular that the Partial Interim Award cannot necessarily decide the issue that is directly or substantially at issue in the current arbitration [*McKithen Case; Wong Case*].

76. In the current case, the issue concerning the adaptation of the contract is not pursuant to the Parties' Sales Agreement [*Cl. Ex. 5*], while in the previous arbitration, Respondent alleged the adaptation of the contract to another party because their agreement specifically stipulated

ICC Hardship Clause 2003 [*PO2, ¶39*]. However, there exists no such ICC Hardship Clause 2003 in the present dispute [*Cl. Ex. 5*]. Therefore, the Partial Interim Award is not directly nor substantially necessary to decide the merits at issue in the present arbitration due to the substantially distinct provisions in the contracts of the previous arbitration and the dispute at hand.

77. In conclusion, the doctrine of issue preclusion cannot be applied to the current case as the previous arbitration is not directly nor substantially necessary to the present arbitration.

CONCLUSION TO PART TWO

78. Claimant's illegally obtained evidence from a company violates clean hands doctrine and the Tribunal may exclude the evidence to be submitted by Claimant not in accordance with relevance, materiality and admissibility prescribed in Art. 22.2 HKIAC 2018. Claimant cannot invoke UNRT to submit evidence not in accordance with the subject requirement and "treaty" requirement in the Rules. Even if Claimant can invoke UNRT, adaptation of the contract does not fall into the sphere public interests and this principle cannot justify the submission of the evidence. Lastly, the doctrine of issue preclusion is not able to justify Claimant's submission of the evidence.

PART THREE: CLAIMANT IS NOT ENTITLED TO THE PAYMENT OF $1,250,000 FROM AN ADAPTATION OF THE CONTRACT NEITHER UNDER CLAUSE 12 NOR CISG

79. Arbitral Tribunal has no power to adapt the contract with reference to the analysis above [*supra ¶¶28-45*] and the fact that there has been no new agreement regarding the adaptation made by the Parties. Even if Arbitral Tribunal has power to adapt the contract, Claimant is also not entitled to the payment of US$ 1,250,000 from an adaptation of the price under Clause 12 of the contract **(I.)**. Alternatively, CISG should not be applied to adapt the contract either **(II.)**.

I. CLAIMANT IS NOT ENTITLED TO $1,250,000 UNDER CLAUSE 12 OF THE CONTRACT

80. Claimant alleges that $1,250,000 shall be paid pursuant to Clause 12 [*Tulane Memo, ¶¶68-112*], however, it relieved Claimant from invoking hardship due to its nature of force majeure clause **(A.)**. Even if Clause 12 is applicable under such circumstances, the requirements of it are not fully satisfied **(B.)**.

A. Clause 12 only results in exemption, therefore it should not be applied to adapt the contract

81. Reviewing the negotiation history, no agreement of establishing hardship clause was concluded. Claimant alleges that the Tribunal has the power to adapt the contract under the hardship clause, *i.e.* Clause 12 [*Tulane Memo, ¶71*]. However, Clause 12 ended up as a force majeure clause, exempting Claimant's liability under two circumstances **(*1.*)**. In addition, the wording of the force majeure clause plainly provides disclaimer with no authorisation of the possibility for price adjustment **(*2.*)**.

1. The Parties reached an agreement containing a force majeure clause rather than a hardship clause

82. By analysing its formation, Clause 12 should be construed as a force majeure clause. According to literal interpretation [*Lookofsky, p. 28; Kröll, p. 125*] as well as Art. 8 CISG, including a "subjective test" **(*a.*)** and an "objective test" **(*b.*)** to look into the Parties' real intents [*Art. 8 (1), (2) CISG; Lookofsky, p. 39*], considering all relevant circumstances of the case, including negotiations [*Art. 8 (3) CISG; MCC Case; Supply Case; Fashion Products Case*], Clause 12 is virtually a force majeure clause.

a. Claimant knew or could not have been unaware of Respondent's intent to incorporate Clause 12 as a force majeure clause

83. Pursuant to Art. 8 (1) CISG, Clause 12 ought to be understood in accordance with Respondent's intention when that was known or could not be ignored by the recipient [*Kröll, p. 145; MCC Case; Hanwha Case; Footwear Case; Marzipan Case*]. Under this provision, Respondent's subjective intent is irrelevant unless it is manifested in some fashion [*Office Furniture Case*]. In addition, Respondent, a party who asserts that Art. 8 (1) applies, is responsible to prove Claimant's awareness [*Fabrics Case*].

84. Claimant requested for an inclusion of hardship clause into the contract [*Cl. Ex. 4*], but negotiation on this matter was interrupted due to the car accident [*Cl. Ex. 8*]. Respondent never acknowledged Clause 12 as a hardship clause neither in negotiation [*Resp. Ex. 1; 2*] nor in its witness statement [*Resp. Ex. 3*]. The only agreement reached between Claimant and Respondent was containing the mere wording of hardship [*Cl. Ex. 5; ANoA, ¶4; Resp. Ex. 3*].

85. Therefore, Claimant must have known the intent of Respondent rejecting the inclusion of hardship clause into the contract, and it should be understood as a force majeure clause only for exemption.

b. A reasonable person of the same kind as Claimant in the same circumstances would have had the understanding that Clause 12 serves as a force majeure

86. If the Tribunal finds the inapplicability of subjective interpretation either because of juridical practice [*MCC Case; Building Materials Case*] or scarcity of close relationships between the Parties [*Minerals Case*], Clause 12 is supposed to be read according to the understanding of a reasonable person placed in Claimant's shoes surrounding the issued statement [*Art. 8 (2) CISG; Kröll, p. 149; Lookofsky, p. 39; StencilMaster Case; Electro-Erosion Machine Case; Trees Case; Surface Protective Film Case*]

87. In the present case, Claimant initiated a hardship clause in the contract to address the subsequent changes [*Cl. Ex. 4*] but received no positive response from Respondent by mentioning ICC-hardship clause too broad [*ANoA, ¶4; PO2, ¶12*]. The silence of Respondent did not constitute an acceptance of hardship clause [*Art. 18 CISG; Machinery Case*]. Following the car accident, Claimant and Respondent agreed to merely add a hardship wording to the existing force majeure clause [*Cl. Ex. 5; ANoA, ¶4; Resp. Ex. 3*]. Further, it was an ice-breaking trade between the Parties [*Cl. Ex. 2*]. Thus, inclusion of hardship clause remained silence ever since and there were hardly any formed customs between the two Parties [*Art. 9 CISG*]. Therefore, under the test of reasonable third person, there was no hardship clause concluded in the contract.

88. Therefore, pursuant to the intention and the understanding of a reasonable third person [*Art. 8 (2) CISG*], Clause 12 should be interpreted as a force majeure clause instead of a hardship clause or any other clauses likewise.

2. Clause 12 may only result in exemption rather than price adaptation

89. Claimant states that it would be reasonable to adapt the contract according to the hardship provision [*Tulane Memo, ¶72*]. However, textual meaning as well as mutual consent has already made it clear that the force majeure clause was originally aimed as a disclaimer, without the function of price alteration. Therefore, the force majeure clause can only result in exemption.

90. The formation of the force majeure clause implied its purpose was to release the liability rather than adapt the contract for future changes. Literal interpretation is considered as the primary method for the interpretation of the CISG [*Kröll, p. 125; Lookofsky, p. 28*]. Clause 12, which is the derogation of Art. 79 CISG [*ANoA, ¶20; Art. 6 CISG*], provides at the beginning:

"[s]eller shall not be responsible for…", which is a typical heading of a force majeure clause [*IFM 2003; IFM 1985; Art. 79 CISG*]. Moreover, situation of force majeure in a global scale is recognised as a method for exemption only [*Art. 79 CISG; §8:108 PECL; Art. 7.1.7 PICC*]. Therefore, the force majeure clause in a contract brings about exemption only.

B. Even if Arbitral Tribunal could adapt the price under Clause 12 of the contract, however, the dispute does not comply with the elements of Clause 12

91. As analysis above, the legal effect of Clause 12 is an exemption only rather than adapting the contract. Even if Clause 12 could lead to an adaptation of the contract, however, the tariff event is not unforeseeable **(*1.*)**. In addition, the risk of tariff has been assumed by Claimant under DDP **(*2.*)**. Alternatively, there is neither occurrence of lost semen nor delayed delivery **(*3.*)** and the remaining elements relevant to hardship under Clause 12 are not fulfilled **(*4.*)**.

1. The increase of tariff is not unforeseeable and has been foreseen by Claimant

92. Contrary to Claimant's allegation, the increase of tariff, as a retaliation, is not unforeseeable at the case of hand. [*Tulane Memo, ¶75*]. The unforeseeable events refer to events with little possibility to be taken into account at the time the contract was concluded. Fluctuations of market and tariff imposition, for instance, are included in categories of foreseeable events in the eye of reasonable international businessman, the purist form of rationality [*Hydroelectric Power Station Case; Marketing Agreement Case; Loan Agreement Case*].

93. The new President of Mediterraneo, Bouckaert, had expressed his preference for a more protectionist approach to international agricultural trade during the election in January 2017 [*Cl. Ex. 6*]. Ms. Frankel, a typical outspoken protectionist, was appointed to be the "superminister" for agriculture, trade and economics after Bouckaert's election [*PO2, ¶23*]. President Bouckaert announced 25 percent tariffs on agricultural products from Equatoriana two months before the last shipment of 50 doses was due [*NoA, ¶9*]. Claimant, as an experienced businessman, could not have been unaware that Equatoriana would probably take countermeasures in retaliation in a "Trade War". Therefore, the increase of tariff is not unforeseeable for Claimant.

94. Furthermore, the tariff imposition was already foreseen by both Parties. If the event was foreseen, then the risk would be allocated and its occurrence cannot be grounds for excuse [*DiMatteo, p. 299*]. In the case at hand, Claimant advised to include a hardship clause into the contract due to past experience when its commercial basis was destroyed because of additional health and safety requirements [*Cl. Ex. 4*] implemented by Danubian government

[*PO2, ¶21*]. Claimant has foreseen the dreadful outcome of tariff imposition with strong will to resist it and Clause 12 itself is the proof. What Claimant failed to accomplish was to put the effect of price adaptation into the clause. Therefore, the tariff imposition is not only foreseeable but was foreseen by Claimant.

2. The risk of tariff is assumed by Claimant under DDP

95. Claimant insists that it would not bear the risk of the additional tariff [*Tulane Memo, ¶82*]. However, according to the agreed delivery terms of DDP, the risk of tariff is assumed by Claimant [*Cl. Ex. 5*].

96. It is the seller's obligation to bear all costs and also all risks up to the moment in which the goods arrive at the named place of delivery under the term of DDP (delivered duty paid), which places the entire responsibility on the exporter including also the clearance of the goods for import into the buyer's country [*Raw Salmon Case*]. Further, Arbitral Tribunal may only apply the text as it is written according to strict constructionism [*Scalia, ¶23; Rosen, ¶1*]. Thus, arbitrators may endeavour to avoid drawing inferences from external rationale and focus only on the text itself.

97. The Parties reached an agreement that the risk of tariff shall be assumed by Claimant because the term of DDP is not modified in the contract [*Cl. Ex. 5*]. Even if Claimant alleges that it would not take any further risks [*Cl. Ex. 4*], it is deemed to accept a certain degree of risk when it enters into the contract [*Cl. Ex. 8*] because the aversion of risks proposed by Claimant has not been reflected in the contract [*Cl. Ex. 5*]. Although Claimant has tried to renegotiate and make a modification on the term of DDP, there was no such special agreement concluded [*Cl. Ex. 5*]. Therefore, the risk of tariff is assumed by Claimant, which does not fulfil the hardship requirements in MCL, a verbatim adoption of the PICC [*PO1, III.4*].

3. There is neither occurrence of lost semen nor delayed delivery in this case

98. One of the general principles upon which CISG is based is party autonomy [*Art. 6 CISG; Kröll, pp. 99-101; Lookofsky, p. 24; Bullet-Proof Vest Case; Agricultural Products Case; Design of Radio Phone Case; Granite Stone Case, etc.*]. In addition, the most logical starting point to seek for the true meaning of a provision is simply the written provision *per se* – *i.e.* the "plain meaning" of the contractual provision [*Lookofsky, p. 28; Andersen, §5.2.b, etc.*].

99. As aforementioned, Clause 12 of the contract is essentially a force majeure clause which states that seller shall not be responsible for lost semen or delayed delivery caused by the occurrence of specific events on the basis of the will of the Parties [*supra ¶¶80-90; Cl. Ex. 5*]. Claimant's

liability is exempted where lost semen or delayed delivery caused by specific events [*ibid.*]. However, there is neither lost semen nor delayed delivery while Claimant has performed its contractual obligations. Therefore, contrary to Claimant's assertions, the current event does not comply with the exemption from liability under Clause 12 of the Sales Agreement.

4. The elements relevant to hardship of Clause 12 are not complied

100. Claimant alleges that the increase of tariff falls into the sphere of the hardship under Clause 12 of the contract [*Tulane Memo, ¶72*]. However, the change of tariff does not fall into the scope of the hardship events provided in Clause 12.

101. The Equatorianian government imposed 30% tariffs on agricultural products including frozen semen in retaliation for the 25% increased tariff of Mediterraneo [*Cl. Ex. 6*]. The increase of tariff is obviously neither health nor safety requirements prescribed in Clause 12 (*a.*). In addition, contrary to Claimant's assertions, the tariff issue is not a comparable unforeseen event (*b.*).

a. The tariff imposed herein does not fall in the scope of health or safety requirements

102. According to the plain meaning of Clause 12, seller is not responsible for the hardship caused by additional health or safety requirements [*Cl. Ex. 5*]. In 2014, Claimant suffered the additional 40% of sales price for the very strict health and safety requirements imposed by Danubian government due to a rare type of foot and mouth disease, upon which the Parties stated an exemption event in Clause 12 [*ibid.; PO2, ¶21*]. Contrary to the situation in 2014, there was no analogous health and safety requirement in Equatoriana in the case at hand. Therefore, health or safety requirements did not emerge.

2. The increase of tariff is not a comparable unforeseen event

103. Claimant alleges that the Parties had a common intention that the "comparable unforeseen events" includes the increased tariff [*Tulane Memo, ¶75*]. Contrary to Claimant's unilateral assertions, Respondent does not agree that increase of tariff is a comparable unforeseen event in this case.

104. As the analysis above, Clause 12 is essentially a force majeure clause with narrowly wording hardship conditions [*Cl. Ex. 5; ANoA, ¶4; Resp. Ex. 3*]. The hardship is more specific and narrower in its scope than the force majeure excuse, as only those changes of circumstances are to be considered [*Brunner, ¶221*]. Further, if two or more things are comparable, they are of the same kind or are in the same situation, and so they can reasonably be compared

[*Hanks/Urdang*]. Thus, Claimant's interpretation to the comparable unforeseen event in Clause 12 is too broad.

105. As aforementioned, the Parties regulate the occurrence of health and safety requirements because of Claimant's suffering [*PO2, ¶21*]. The additional requirements were made by Danubian government, though, the key point was that the additional payment caused by epidemic was never considered and assumed by the both Parties. However, the tariff event is assumed by Claimant in this case, because Clause 8 provides an agreed delivery term of DDP [*Cl. Ex. 5*]. The risk of tariff shall be borne by Claimant [*infra ¶¶113-115*]. In addition, the foot and mouth disease was an act of god. However, tariff imposition could be essentially controlled by human beings. Thus, the tariff event is not comparable with the health and safety requirements because they are not the same kind. The "any unexpected government event" alleged by Claimant is too broad. Therefore, the risk of tariff is not a comparable unforeseen event.

106. Conclusively, Arbitral Tribunal has not sufficient rationale to adapt the contract under Clause 12 of the contract.

II. CLAIMANT IS NOT ENTITLED TO THE PRICE ADAPTATION UNDER CISG

107. Claimant believes that CISG provides for relief and entitles Claimant to the payment of $1.25 million dollars based on Art. 8, asserting Respondent's apparent acquiescence to adapt the price when Ms. Napravnik discussed the solution of the sudden imposition of tariff with Mr. Shoemaker reflects Respondent's awareness of Claimant's intent [*Tulane Memo, ¶88*], however, silence itself from Respondent does not constitute consensus over price adaptation **(A.)**. Further, Claimant may invoke PICC when demonstrating hardship, but the current event does not comply with the elements of hardship in PICC **(B.)**. In addition, Respondent's actions were in accordance with the principle of good faith without unjust enrichment **(C.)**.

A. Claimant and Respondent did not reach a conclusion of price adjustment

108. Claimant alleges that Ms. Napravnik relied on her impression of Mr. Shoemaker's vague promise that they would be able to work out an additional payment if she authorised the shipment to Respondent [*Tulane Memo, ¶90*], and interpreted Mr. Shoemaker's phone call as awareness of Claimant's intent based on Ms. Napravnik's impression. However, the fact is that Claimant and Respondent did not agree to adapt the price in the phone call. Mr. Shoemaker clearly refused when Ms. Napravnik asked for price adaptation, saying that he had not been involved in the negotiations and could not directly authorise any additional

payment [*Cl. Ex. 8*].

109. According to Art. 18 CISG, silence itself does not amount to acceptance. Claimant required for price adaptation during the phone call, yet received no positive response from Respondent. Therefore, no mutual consent was established on price adaptation.

B. The current event does not comply with the element of hardship in PICC

110. CLAIMANT alleges that the payment should be adapted by Arbitral Tribunal in accordance with Art. 6.2.3 of PICC [*Tulane Memo, ¶96*]. To prove that, Claimant would demonstrate that the current events are not satisfied with elements of Art. 6.2.2 PICC. Contrary to Claimant's assertions, the tariff event is not unforeseeable **(*1.*)**. Second, the agreed risk assumption should be borne by Claimant **(*2.*)**. Third, Claimant failed to renegotiate with Respondent without undue delay **(*3.*)**.

1. The increase of tariff is not unforeseeable

111. Contrary to Claimant's allegation, the increase of tariff, as a retaliation, is not unforeseeable in the case at hand [*Tulane Memo, ¶101*]. Equatoriana is entitled to take appropriate countermeasures to Mediterraneo since both Mediterraneo and Equatoriana are members of WTO [*Cl. Ex. 6; Art. 22.3 DSU*]. Under such circumstances, Equatoriana was highly likely to take countermeasures against the increase of tariff from Mediterraneo. The unforeseeable events refer to the events which could not reasonably have been taken into account by disadvantaged party [*Art. 6.2.2 PICC*]. However, the fluctuations of market and changes of conditions such as tariff events could reasonably have been taken into account by an experienced transnational businessman [*Hydroelectric Power Station Case; Marketing Agreement Case; Loan Agreement Case*].

112. The new President of Mediterraneo, Bouckaert, had expressed his preference for a more protectionist approach to international agricultural trade during the election in January 2017 [*Cl. Ex. 6*]. Ms. Frankel, a typical outspoken protectionist, was appointed to be the superminister for agriculture, trade and economics after Bouckaert's election [*PO2, ¶23*]. President Bouckaert announced 25% tariff on agricultural products from Equatoriana two months before the last shipment of 50 doses was due [*NoA, ¶9*]. Claimant, as an experienced businessman, could not have been unaware that Equatoriana would probably take countermeasures in retaliation.

2. The risk of tariff is assumed by Claimant

113. Claimant insists that it would not bear the risk of the additional tariff [*Tulane Memo, ¶102*]. However, according to the agreed delivery terms of DDP, the risk of tariff is assumed by Claimant [*Cl. Ex. 5*].

114. It is the seller's obligation to bear all costs and also all risks up to the moment when the goods arrive at the named place of delivery under the term of DDP (delivered duty paid), which places the entire responsibility on the exporter including clearance of the goods for import into the buyer's country [*Raw Salmon Case*]. Further, Arbitral Tribunal should only apply the text only as it is written according to strict constructionism [*Scalia ¶23; Rosen, ¶1*]. Thus, arbitrators shall avoid drawing inferences from external rationale and focus only on the text itself.

115. The Parties have been stated that the risk of tariff shall be assumed by Claimant because the term of DDP is not modified. Even if Claimant alleges that it would not take any further risks, it is deemed to accept a certain degree of risk when it enters into the contract [*Cl. Ex. 8; Art. 6.2.2 PICC*]. Although Claimant have tried to renegotiate and make a modification on the term of DDP, there is no new agreement finalised [*Cl. Ex. 5*].

3. Claimant failed to renegotiate with Respondent without undue delay

116. Claimant could have renegotiated with Respondent without undue delay but failed due to lack of duty of diligence. Disadvantaged party is entitled to request renegotiation [*Art. 6.2.3 PICC*]. In the case at hand, the request for renegotiation must be made by Claimant as quickly as possible after the time at which hardship is alleged to have occurred [*ibid.*]. An obligor's typical sphere of control encompasses situations where the obligor could have obtained the relevant information in time, had the information management of its business been organised in a diligent and proper way, according to an objective standard [*Brunner, ¶¶11, 135, 236; Schlechtriem/Schwenzer I, ¶12*]. Claimant has the obligation to obtain and organise business information during the performance. In particular, the obligor is responsible for the acts and omissions of its personnel and third persons engaged to perform its obligations [*Magnus, ¶43; Schlechtriem/Schwenzer I, ¶29; Brunner, ¶51*].

117. In this case, Ms. Napravnik, as Claimant's lawyer and prime negotiator of the contract, has the responsibility to ascertain the scope of agricultural products affected by the tariff under the terms of DDP. However, the news of the retaliatory tariff did not cross Claimant's mind that frozen semen might be governed by the tariff. Ms. Napravnik did not know that the tariff

would also be applied to frozen semen until she read an email from the customs on the morning of 20 January 2018, 3 days before the due time of the last shipment [*PO2, ¶26*]. Ms. Napravnik did not contact with a qualified representative of Respondent as quick as possible, however, she contacted Mr. Shoemaker on the next morning [*Cl. Ex. 8*]. Given that the breeding season was started, Mr. Shoemaker could not reject Claimant's requests under its threats [*ANoA, ¶10; Resp. Ex. 4*].

C. Respondent was not unjustly enriched and acted in good faith

118. Claimant alleges that Respondent planned at the beginning to resell the semen obtained from Claimant to other buyers and breached the contract [*Tulane Memo, ¶105*]. However, the resale of Respondent was not necessary to fundamentally alter the equilibrium. The resale actions between Respondent and its costumers constitute new contractual relationships which are independent of the current contractual relation between Claimant and Respondent. Therefore, the profit gained by the resale of Respondent does not necessarily lead to an increase of costs for Claimant, let alone adapting the contract. Besides, Respondent has responsibility of registration in line with a literal interpretation of Clause 9 of the contract which does not prohibit the resale of Respondent [*Cl. Ex. 5; PO2, ¶2*]. At the same instant, Claimant had already known that Respondent was likely to resell the frozen semen based on the past experience and contracting negotiations due to the astounding amount of frozen semen [*Cl. Ex. 2*] and the traditional customs of purchasing such goods, *i.e.* in general, breeders only buy frozen semen for a specific mare [*PO2, ¶19*]. However, there is no effective prohibition on reselling the semen in the final contract [*Cl. Ex. 5*]. Third, even if Respondent failed to register the use and payment of the frozen semen, it is an ordinary breach of contract and the remedies of it do not contain price adaptation.

119. In addition, Claimant alleges that the impediment confronted satisfies the requirements of Art. 79 CISG and it is entitled to claim contractual adjustment [*Tulane Memo, ¶107*]. Indeed, the wording of impediment stands for a wide range of changed circumstances and ought to be broadly interpreted. Respondent acknowledges the imposition of tariff as an impediment, though not a case of hardship, and is also aware of the cause and effect between the tariff and the impediment.

120. However, Art. 79 CISG can be triggered unless all the elements are sufficed simultaneously. In the present dispute, there was no non-performance of obligation on the side of Claimant under the contract. Art. 79 CISG provides exemption for "a failure to perform any of his obligations" [*Art. 79 (1) CISG; Digest, p. 374; CISG-AC No. 7 Opinion 1; Lookofsky, p. 138*]. The

non-execution of a party's promise shall be a prerequisite for contractual liability to arise [*Kröll, p. 1055*]. Thus, Art. 79 CISG may only be invoked when one party fails to perform his obligations under the contract [*Judo-Suits Case; Used Cars Case; Certain goods Case II; Live Mollusks Case; Rail Case; Chicken Parts Case; Automobile Case*].

121. In this case, obligations for Claimant are expressly reflected in the contract concluded, which refers to three shipments of Nijinsky III's 100 doses of frozen semen in DDP delivery [*Cl. Ex. 5*]. Claimant failed to notice that they had delivered the goods and transferred the property of the goods as required in the contract without undue delay [*NoA, ¶13; ANoA, ¶10*], fulfilling all the obligations Claimant had to perform. Therefore, Claimant was not involved in any form of non-performance under the contract and is not qualified to rely on Art. 79 CISG for remedy.

122. In conclusion, Claimant is not entitled to the adjusted price of US$ 1,250,000.

CONCLUSION TO PART THREE

123. Claimant is not entitled to the adapted payment of US$ 1,250,000 under clause 12 of the contract because it merely leads to exemption rather than price adaptation as well as the elements are not fully satisfied. In addition, while it is possible for Claimant to adapt the contract under PICC, the elements under it are not fulfilled either. Respondent acted in good faith because resale is not prohibited in the contract, and Claimant failed to invoke Art. 79 CISG lacking the fulfilment of the prerequisite of non-performance thereof.

PRAYERS FOR RELIEF

For all the foregoing submissions the counsel for RESPONDENT respectfully requests Arbitral Tribunal to find that:

(1) Arbitral Tribunal does not have the jurisdictions and the powers under the arbitration agreement to adapt the contract, and the law of Mediterraneo cannot governs the arbitration agreement and its interpretation **(PART ONE)**;

(2) CLAIMANT is not entitled to submit the evidence from the other arbitration proceedings **(PART TWO)**;

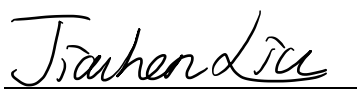
(3) CLAIMANT is not entitled to the US$ 1,250,000 payment under neither Clause 12 of the contract nor CISG **(PART THREE)**.

(4) CLAIMANT bears the costs of the arbitration.

CERTIFICATE

We hereby confirm that this Memorandum was written only by the persons whose name are listed below and who signed this certificate.

Respectfully submitted on 24th January 2019 in Xi'an, China.



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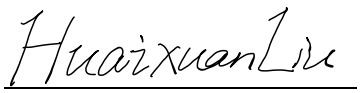

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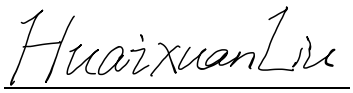

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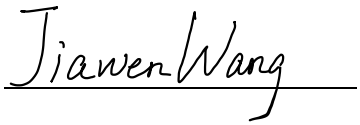

JIAWEN WANG

JIAYUAN YAO

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