WILLEM C. VIS INTERNATIONAL COMMERCIAL ARBITRATION MOOT

MEMORANDUM FOR CLAIMANT

On Behalf of:	Against:
Phar Lap Allevamento	Black Beauty Equestrian
75 Court Street	2 Seabiscuit Drive
Capital City	Oceanside
Mediterraneo	Equatoriana
CLAIMANT	**RESPONDENT**

ALI MOHAMMAD YAQOBI □ AOGAY ALOZAI WARDAK □ SHOAIB MEHRYAR □ ZAINAB AZIZI

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TABLE OF ABBREVIATIONS

Art. /Arts.	Article / Articles
Arb.	Arbitration
CISG	United Nations Convention on Contracts for the International Sale of Goods
CoC	Code of Conduct
Clm.	CLAIMANT
Ex.	Exhibit
e.g.	exempli gratia (example given)
FOA	Form of Authorization
Ord.	Order
UNCITRAL	United Nations Commission on International Trade Law
HKIAC	HONG Kong International Arbitration Centre
UNIDROIT	International Institute for the Unification of Private Law
FSSA	Frozen Semen Sales Agreement
UN	United Nations
USA	United States of America
USD	United States Dollar

V	Versus
Vol.	Volume
Resp.	RESPONDENT
RESPONDENT	Black Beauty Equestrian
CLAIMANT	Phar Lap Allevamento
Lex arbitrii	Law of the place where the arbitration is taking place
Lex contr actus	law of the place where the contract is made
P.	Page
pp.	Pages
Paras.	Paragraphs
Et. Al.	and others
Proc.	Procedural
Co.	Company
Ltd.	Limited
IBA	International Bar Association
ICC	International Chamber of Commerce

Mr.	Mister
Ms.	Miss
No.	Number
PCA	Permanent Court of Arbitration
PO1	Procedural Order 1
PO 2	Procedural Order 2
Para.	Paragraph
Parties	Phar Lap Allevamento and Black Beauty Equestrian
Plc	Public Limited Company
SOF	Statement of facts
CSR	Corporate social responsibility
Req.	Request

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STATEMENT OF FACTS

1. Phar Lap Allevamento “Phar Lap” the CLAIMANT, is a stud farm in the capital city of Mediterraneo. It has many different services including its own mare herd, offspring and stallion depot. Black Beauty Equestrian “Black Beauty” the RESPONDENT is famous for its broodmare lines that have resulted in winning many racehorse competitions.

2. On 21 March 2017 the RESPONDENT contacted the CLAIMANT for frozen semen of Nijinsky III, one of the famous horses, for new season of breeding. Since the government had banned transportation of animals from one place to other, RESPONDENT tried to acquire frozen semen for artificial breeding. Thus, the RESPONDNET asked for the offer of claimant for 100 doses.

3. The CLAIMANT on 24 March 2017, made its offer of 100 doses to RESPONDENT with its own terms and conditions. The CLAIMANT emphasized that they do not usually sell that amount doses to one particular party. However, RESPONDENT with very confidence assured CLAIMANT that these doses are only for improving their breeding business. Again, CLAIMANT put a condition on that the doses shall not be resold to any third party.

4. Respondent only objected on two main points, first was having a DDP type of contract and second was the choice of law for arbitration clause. However, the claimant was only willing to accept a delivery DDP against a moderate price increase, the transfer of certain risks to Black Beauty and the inclusion of a hardship clause to temper some of the additional risks taken.

5. The contract was finalized 6th May 2017 including a hardship clause however, the contract was signed not by the ones who negotiated the contracts terms but by different people. Since, the two main negotiators had a severe car accident before finalizing the contract.

6. The parties agreed on having three different shipment of doses. First two shipments were 25 doses each, the last shipment was 50 doses. The first two shipments were made on time and no problem occurred. However, on 20 December 2017 a news was published in which government of Equatoriana has put 25% tariffs on agriculture products including frozen semen.

7. Claimant immediately started negotiations with respondent and stated that tariff is included within the hardship clause. Mr. Shoemaker, the responsible person for breeding development program in Black Beauty, promised claimant that once the delivery is done, they can negotiate regarding outstanding payments of tariffs. He emphasized on delivery so much since he was stating that the breeding season has started and they needed the doses as soon as possible.

8. However, once the delivery was made, respondent denied to pay any kind of additional payments and stated that the hardship clause clearly does not include tariffs. From the facts it can also be extracted that respondent did not have a good intention toward claimant, since they wanted to resell the doses back to another party and breaching the contract.

9. Not only that, claimant has obtained reliable information that respondent itself is involved in another arbitration in which they are the seller and they are trying to put the obligation of tariffs on buyer.

10. A first investigation has disclosed that the only source of the information promised could either be two former employees of RESPONDENT, the contracts of which had been terminated three months ago for cause with immediate effect, or a hack of RESPONDENT's computer system which occurred three weeks ago and where the hackers managed to retrieve a considerable amount of data.

11. Because the parties could not agree among themselves they agreed for arbitration but there were issues there as well.

12. Respondent and claimant both in the contract agreed on having Danubia as seat of arbitration but in the email of claimant, it clearly mentioned that the governing law is Mediterraneo's even though the seat of arbitration would be Danubia.

13. The Arbitral Tribunal has jurisdiction to hear the case. Many discussion happened involving the exchange of several drafts, the Parties agreed on the arbitration clause. The arbitration clause is valid and covers the claim.

14. The Arbitration Law of Mediterraneo provides for a broad interpretation of arbitration agreements, similar to other jurisdictions, regardless of a supposedly narrow wording referring to "dispute(s) arising out of this contract".

SUMMARY OF ARGUMENTS

ISSUE ONE: BASED ON THE AGREEMENT OF PARTIES, CISG GOVERNS THE ARBITRATION AGREEMENT WHICH GIVES TRIBUNAL THE JURISDICION AND/OR POWERS TO ADOPT THE CONTRACT.

15. RESPONDENT claims that according to doctrine of separability, the law of procedural contract has to be different than the law of substantive contract. However, according to Hong Kong International Arbitration Centre (2018), doctrine of separability only separates the contract because of the invalidity and it doesn't include the separation of law. Instead, based on aricle 8.1 of The United Nations Convention on Contracts for the International Sale of Goods (CISG), the parties have agreed on the lex contractus which is the law of the place where the contract is made. Moreover, the parties have as well agreed on the jurisdiction and power of tribunal to adapt the contract. Because the arbitration clause, negotiations of the parties and UNICTRAL Rules all prove the jurisdiction of the tribunal

to adapt the contract. Even if, RESPONDENT claims that the parties never agreed, UNIDROIT principles gives the jurisdiction to the tribunal to adapt the contract.

ISSUE TWO: CLAIMANT IS ENTITLED TO SUBMIT EVIDENCE FROM THE OTHER ARBITRATION PROCEEDING WHICH WILL NOT BREACH THE CONFIDENTIALITY OF THE CONTRACT.

16. The evidence which was obtained by CLAIMANT is not illegal based on Hong Kong International Arbitration Centre and International Bar Association. Furthermore, doctrine of poisonous tree considers evidence illegal, when it is obtained from an illegal search. CLAIMANT has obtained the evidence from a third party who has not disclosed its source which means the evidence is not illegal. Even if, the evidence is illegally obtained, CLAIMANT can submit the evidence and it will not breach the confidentiality agreement of the contract. Therefore, the evidence is not illegal and it can be submitted in the arbitration which will not result in breach of confidentiality.

ISSUE THREE: RESPONDENT UNDER THE CONTRACT AND THE CISG IS ENTITLED TO PAYMENT OF US$ 1,250,000.00 OR ANY OTHER AMOUNT ARISING OUT OF THE ADAPTATION OF THE PRICE.

17. CLAIMANT fulfilling its all obligations is entitled to receive US$ 1,250,00.00. The disputed amount arising out of adaptation of the price was included in the original contract between both parties. The original contract included a determinable price under which unforeseen events such as tariffs were included as well. Moreover, both parties had agreed from the time of negotiation on modification of contract under DDP. In addition to the contract, CISG which is the law governing the merit of the case also provides on modification of the contract due to hardship and/or impediment. And last but not least, CLAIMANT delivered the products based on the promise of RESPONDENT for renegotiation of price. However, RESPONDENT not only breached its responsibility but also breached its good faith obligation. Therefore, RESPONDENT is held liable to pay the

additional amount of price due to unforeseen tariffs under the contract, CISG as well as principle of good faith.

ISSUE ONE: BASED ON THE AGREEMENT OF PARTIES, CISG GOVERNS THE ARBITRATION AGREEMENT WHICH GIVES TRIBUNAL THE JURISDICION AND/OR POWERS TO ADOPT THE CONTRACT.

18. On 24th March 2017, CLAIMANT offered 100 doses of Nijinski III's frozen semen in accordance with the Mediterraneo Guidelines for Semen Production and Quality Standards for RESPONDENT [Page 10, CLAIMANT's Exhibit C2, Par 1]. However, RESPONDENT objected to the choice of law and suggested to apply the law of Mediterreano if the courts of Equatoriana have jurisdiction [Page 11, CLAIMANT's Exhibit C3]. CLAIMANT then did not accept the jurisdiction of Equatoriana's courts but rather, both parties agreed on the jurisdiction of Danubia's courts and applicability of law of Mediterraneo which is CISG. [Page 14, CLAIMANT's Exhibit C5, Par 15]. RESPONDENT claims that because the seat of arbitration is in Danubia then according to doctrine of separability, which is accepted by most of the legal systems, the law should also be different. However, contrary to the claim of RESPONDENT, scope of doctrine of separability does not include the separation of law in substance and procedure (A). Therefore, based on the agreement of the parties governing law of arbitration is CISG (B). In addition, the tribunal has the jurisdiction to adapt the contract (C).

A. According to HONG Kong International Arbitration Centre (2018) Rules and UNICTRAL Rules, Doctrine of Separability does not include the separability of the law.

19. REPONDENT claims that according to the doctrine of separability, the arbitration agreement and the principle agreement are separate from each other. Thus, the law of both contracts should be different.

20. However, article 19.2 of HKIAC Rules (2018) states that, "The tribunal shall have the power to determine the existence or validity of any contract of which an arbitration agreement forms a part and a decision by the arbitral tribunal that the contract is null and void shall not necessarily entail the invalidity of the arbitration agreement." Article 16 of UNICTRAL further explains the scope of doctrine of separability by stating that, "The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. Therefore, a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause." These rules explain the content of doctrine of separability that it only applies to the validity of the contract. Therefore, even if the substance agreement is invalid, it does not invalidate the arbitration clause because both are different contracts. According to Born it does not mean that the law of arbitration is necessarily different than the law of underlying contract [Gary B. Born, 2014].
21. Gary Born further clearly states that, "in many cases, the same law governs both the arbitration agreement and the underlying contract" [Gary B. Born, 2001]. Therefore, the law of Mediterreano which is the governing law of the underlying contract applies to the arbitration agreement too.

B. According to the intention of the parties, the arbitration clause should be governed by CISG.

22. As discussed before the question of applicable law complicates matters. Thus, … proposes three options to the applicable law. The options are: (a) to create a third candidate for the law applicable to the arbitration clause, (b) Lex contractus which is the law of the place where the contract is made, (c) lex arbitrii which is the law of the place where the arbitration is taking place. However, in the current case the parties did not agree on lex arbitrii nor they had an agreement of a third candidate for the law applicable for the arbitration agreement. [Philip Landolt, 2013]
23. Instead parties had agreed on the law of the place where the contract is made. Therefore, based on the subjective (I) and objective intention (II) of the parties, CISG is the governing

law of the arbitration agreement because it is the law of place (Mediterraneo) where the contract is made.

A. According to the subjective intention of the parties under article 8.1 of CISG constituted to apply CISG on arbitration clause.

24. At the time of conclusion of the contract, parties agreed on the applicability of Law of Mediterraneo, including the United Nations Convention on Contracts fort the International Sale of Goods for governing the Sales Agreement [Page 14, CLAIMANT's Exhibition C5, par 14]. But RESPONDENT then agrees to the applicable law by stating that, "We could accept the application of the Law of Mediterraneo if the courts of Equatoriana have jurisdiction" [Page. 11, CLAIMANT's Exhibition C3, Par 3]. However, CLAIMANT rejects the jurisdiction of Equatoriana courts and suggests agreeing on a third country, which parties agree on by stating that, "It is, however, not acceptable that we submit to the jurisdiction of the courts in Equatoriana. A possible solution, if you cannot agree on the jurisdiction of the courts in Mediterraneo, would be to opt for arbitration in Mediterraneo" [Page 12, CLAIMANT's Exhibit C4, Par. 4]. Then the parties did not discuss the applicable law further but they agreed on the applicability of CISG as the governing law for the Sales Agreement. Considering this issue, ICC Award Case No. 6752 which was also a dispute about the governing law on arbitration agreement. The parties in the case had also not explicitly mentioned the governing law of the arbitration agreement in the contract. Therefore, the tribunal in the mentioned case decided that that the law of arbitration agreement shall be decided based on the laws, rules and customs of Italian Law [1999]. In this case there is a custom in Mediterraneo that if the sales contract is governed by the CISG, the same law applies to the conclusion and interpretation of the arbitration clause [Page. 52, PO1, Par. 8]. As well, arbitral tribunals have reached the conclusion that the national law which is selected though the application of choice-of-law rules, applies to the non-signatory issues as well. The national law where the contract is signed and agreed upon has to rule over any other issue arising out of this contract. If the rules do not make any specific provision to determine the applicable law thus, it would invariably be the same

law as would govern the substantive contract [Gary B. Born, 2014]. And as long the CISG governs the Sales Agreement, the same law has to govern the procedural contract.

25. In addition, according to the ICC Award in Case No. 2626, the tribunal decided that, "it is commonly accepted that the choice of the law applicable to the principal contract also tacitly governs the situation of the arbitration clause, in the absence of any specific provisions" [1999]. In this case, the parties had agreed on the applicability of law on substantive contract but they did not include any provision to explicitly mention the governing law of Arbitration Agreement. But according to the commentaries and case laws mentioned above, because the contract was signed and agreed upon in Mediterraneo, though only the governing law of substantive contract is mentioned, the same national law will apply on the procedural part. In other words, the applicable law on Sales Agreement also tacitly governs the arbitration agreement too.

B. Additionally, from a reasonable person's point of view under Article 8.2 of CISG, arbitration clause is governed by CISG.

26. The parties used one of the HKIAC clauses as their model clause from which the phrase "The law of this arbitration clause shall be ... (Hong Kong law)" was excluded. According to Michael Mozer, "parties are advised to include a specific choice of law for their arbitration agreements particularly where the law of the underlying agreement and law of the seat are different" [A guide to HKIAC Arbitration Rules, Michael Mozer, 2013]. However, the parties included Paragraph 14 in the contract instead of including the mentioned phrase form model clause, which states, "The Sales Agreement shall be governed by the law of Mediterraneo, including the United Nations Convention on Contracts for the International Sale of Goods (CISG)" [Page 14, Exhibit C5, Par 14]. By removing the mentioned phrase from model clause, the parties had brought the clause 14 in the contract and implicitly accepted that CISG will govern the arbitration agreement because the parties did not see it necessary to add any other clause about the arbitration agreement.

27. Accordingly, article 5 of Hague Principles further specifies that, "there is no requirement that particular words be used to communicate the choice of law, and no requirement that the agreement should be in writing or electronic equivalent" [Daniel Girsberger and Neil B. Kohen, 2017]. The author indicates that mentioning of the explicit words because of the governing law, in the contract is not needed and an implicit agreement is enough to agree on the choice of law. Therefore, considering the HKIAC Rules and Hague Principles, a third reasonable person would also choose CISG as the governing law on both contracts because of the implicit agreement of the parties.

28. Even if the parties did not agree implicitly on the application of CISG as the governing law on arbitration agreement, CISG is still the only law which can be the solution to this issue (a).

   a. **Even if the parties did not agree implicitly on the choice of law of arbitration agreement, CISG is considered the applicable law.**

29. According to Gary Born, the arbitration agreements should also be governed by the ordinary rules of contract interpretation or the law governing the underlying contract [Gary B. Born, 2014]. The underlying contract has to be ruled by the law which governs the sales agreement contract. Even if such agreement is not acceptable for the RESPONDENT, then the dispute shall be decided according to the rules of law with which the case has the closest connection [Julian D. M Lew, 1999]. The law which has the closest connection in a contract is the law that the parties have agreed upon and is mentioned in the contract.

30. Moreover, in the ICC award in Case No. 6379, the tribunal held that, "As the agreement was governed by Italian Law, the validity of the arbitration clause must be ascertained according to Italian Law" [1999]. In this case, the sales agreement was governed by the Italian Law but there was no explicit mention of the governing law on arbitration agreement. The tribunal found it the best way to imply the Italian Law on the Arbitration Agreement too since it was the only law which parties agreed on. Hence, in our current case, the parties have also agreed on the governing law of Sales Agreement and the parties

did not find it essential to mention the law again because it was clear for both parties that the Sales Agreement law will govern the arbitration agreement as well. Therefore, because of absence of the procedural agreement on governing law the parties whether have to choose the law which is agreed upon on the substantive part or the law which has the closest connection which in both cases, which is the CISG.

C. The Tribunal has both the Jurisdiction and power to adapt the contract.

31. The parties had agreed on the jurisdiction of the tribunal to adapt the contract for unlikely event when parties could not agree on the amendment. RESPONDENT had also expressly mentioned that, "it should probably be the task of the arbitrators to adapt the contract if the parties couldn't agree" [Page 17, CLAIMANT Exhibit C8, Par 4]. Additionally, based on the agreement of the parties, the tribunal has the jurisdiction to adapt the contract (I) and even if the parties did not agree, UNIDROIT gives the jurisdiction to tribunal to adapt the contract (II).

I. Based on the agreement of the parties, the tribunal has the jurisdiction to adapt the contract.

32. In clause 14 of the contract, the parties agreed on the adaptation of the contract by stating that, "any dispute arising out of this contract … shall be referred and finally resolved by arbitration administered by the Hong Kong International Arbitration Center" (a) [Page 14, CLAIMANT Exhibit C5, Par 15]. The parties as well confirmed that the tribunal should have the jurisdiction to adapt the contract (b). In addition, UNICTRAL also gives the jurisdiction for tribunal to adapt the contract (c).

a. The arbitration clause in the contract gives jurisdiction to the tribunal to adapt the contract.

33. In clause 14 of the contract, the phrase "any dispute arising out of this contract … shall be referred and finally resolved by arbitration administered by the Hong Kong International Arbitration Center" is mentioned [Page 14, CLAIMANT Exhibit C5, Par 15]. The

mentioned clause has to be interpreted broadly and in favor of arbitration which gives the tribunal's competence over issues of interpretation and in favor of broad remedial authority. Moreover, the Mitsubishi Court held that, "any doubts concerning the scope of arbitral issues should be resolved in favor of arbitration" [Gary B. Born, 2001]. Or, as the court puts it even more expansively in Gestetner Holdings, plc v. Nashua Corp that, "where claims may be understood to raise an arbitrable issue, arbitration must be compelled, even if the claims can also be characterized another way" [Gary B. Born, 2001]. The court has made the scope of arbitration very clear that if there is any dispute between the parties which has raised from the contract, arbitration should be compelled [Gary B. Born, 2001]. Furthermore, there is a rule in Common Law countries that, "questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration [and] any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration" [Gary B. Born, 2001; Born, 2014]. This rule is a very clear indication of the scope of arbitration and gives the jurisdiction to the arbitration itself to solve any issues regarding to them.

34. Even if law of Danubia applies, it supports the pro-arbitration. Because it is a tradition in common law countries that the arbitration clause should be interpreted in favor of arbitration. Since Danubia is a common law country, it supports pro arbitration as well. In conclusion, according to the mentioned clause, any dispute that may arise out of this contract has to be referred to the arbitration and the arbitration's decision should be the final decision which is also a rule in Danubia. Therefore, since adaptation of the contract is also a dispute which has raised from the contract, tribunal should decide upon it.

b. According to parties' negotiations, tribunal has the jurisdiction to adapt the contract.

35. Mr. Antley who was working for RESPONDENT as a lawyer who has been the primary negotiator of the contract on RESPONDENT side. He also had confirmed the adaptation of the contract with Miss. Napravnik, CLAIMANT'S lawyer. Miss Napravnik had shared her concern about the adaptation of the contract and to have a mechanism in place which would ensure the adaptation of the contract with Mr. Antley. While Mr. Antley had replied

that “it should probably be the task of the arbitrators to adapt the contract if the parties couldn’t agree” [Page 17, CLAIMANT Exhibit C8, Par 4]. A leading scholar, Abdullah Alfaruq states that, “there can be no doubt that, a tribunal cannot substitute itself for the parties to modify a contract unless the right is conferred upon it by law, or by the express consent of the parties” [Abdullah Al Faruque, 2006]. The scholar puts it in a very clear wording that a tribunal can modify or adapt the contract if the parties have consented. Similarly, the two prime negotiators of the current contract had both came to a decision that the tribunal should have the power and jurisdiction to adapt the contract.

c. Even if UNICTRAL Arbitration Rules applies, the tribunal still has the jurisdiction to adapt the contract.

36. Even if the negotiations and parties’ agreement do not provide sufficient reasons to adapt the contract, UNICTRAL Arbitration Rules gives the jurisdiction to the tribunal for modification of the contract. Article 28.3 of UNICTRAL Arbitration Rules states that, “The arbitral tribunal shall decide ex aequo et bono or as amiable compositeur (the power to adapt the contract) only if the parties have expressly authorized it to do so. The mentioned article makes it clear that the adaptation of the contract is authorized if the parties have agreed upon it. While in this case, the parties have agreed on the jurisdiction of tribunal to adapt the contract therefore, based on UNICTRAL Arbitration Rules, the contract can be modified or adapted by the tribunal.

II. Even if the parties did not agree, UNIDROIT Principles gives the power and jurisdiction to tribunal to adapt the contract.

37. Abdullah Al Farruque says that the power of a third party to re-write the contract or adapt the existing terms of contract will depend, firstly, on the express power given by the parties and, secondly, on whether it is allowed by the applicable law, under ICC Rules for Adaptation of contracts [Abdullah Al Faruque, 2006]. The scholar puts two choices for tribunal’s jurisdiction to adapt the contract which are the allowance by the parties’ agreement and allowance by law. Though the parties had agreed on the jurisdiction of tribunal to adapt the contract, but RESPONDENT may claim that they have not. However,

article 6.2.3 of the UNIDROIT Principles of International Commercial Contracts provides that, "the disadvantaged party is entitled to request renegotiation of contract and, in case of failure to reach agreement within a reasonable time, either party may resort to the court. If the court finds hardship, it may terminate the contract or adapt the contract with a view to restoring its equilibrium. Under the UNIDROIT Principles, the term 'court' also includes an 'arbitral tribunal" [Abdullah Al Faruque, 2006]. This article entitles the disadvantaged party to request for an adaptation of the contract. Even if parties couldn't come to an agreement, any of the parties can refer to arbitral tribunal. Arbitral tribunal can either terminate or adapt the contract but has to restore the equilibrium [Abdullah Al Faruque, 2006]. Similarly, the same rule was applied in the French and United States of America's arbitrations where the tribunal decided to intervene in the contract either with reference to parties' intention or for upholding public policy to ensure fairness [Abdullah Al Faruque, 2006]. In the current case, the parties have had agreement but even if RESPONDENT doesn't accept the agreement, CLAIMANT who is the disadvantaged part can ask the tribunal to adapt the contract based on UNIDROIT Principles.

38. Lastly, the Doctrine of Separability only invalidates the arbitration clause and it doesn't separate the governing law of substance and procedure. Hence based on the agreement of the parties the law of Mediterraneo which is the place where the contract is made applies on the arbitration agreement too. Law of Mediterraneo is CISG which is the applicable law on substantive part of the contract. On the other hand, the parties had agreed on the jurisdiction of the tribunal to adapt the contract in clause 14. Even if, REPOSNDENT denies the jurisdiction of tribunal based on parties agreement, UNICTRAL Rules give the arbitral tribunal the jurisdiction to adapt the contract.

ISSUE TWO: CLAIMANT IS ENTITLED TO SUBMIT EVIDENCE FROM THE OTHER ARBITRATION PROCEEDING WHICH WILL NOT BREACH THE CONFIDENTIALITY OF THE CONTRACT.

39. On 2nd October 2018, CLAIMANT found out that RESPONDENT had another arbitration under the HKIAC-Rules. In the mentioned arbitration, RESPONDENT was negatively

affected by 25% imposed tariff and had asked for an adaptation of the price invoking an unforeseeable change of circumstance [Page 49, Par 2]. Therefore, CLAIMANT thought it would be necessary to mention it in the arbitration. Because RESPONDENT himself had asked for an adaptation of the price but in the current case it is denying any need to adapt the contract to a change of circumstance. CLAIMANT had come to know about this arbitration from its new CEO of one of the customers. However, RESPONDENT claims that CLAIMANT had breached the confidentiality agreement because the data was obtained by illegal means [Page 50, Par 2, 3]. However, the obtained evidence is not illegal (A), even if it is illegally obtained, it can be submitted and used against RESPONDENT (B).

A. The evidence obtained indirectly is not illegally obtained and does not breach the confidentiality of the contract.

40. Doctrine of Fruit of the Poisonous Tree defines the illegal evidence by stating that, "Any evidence that is obtained without permission and illegal search, is illegal evidence" [Michael Tarleton]. According to this doctrine, any evidence that is obtained through illegal searches or probable cause is inadmissible and does not have to be used. Whereas in this case, CLAIMANT became aware of the arbitration, in which RESPONDENT had asked for an adaptation of the price itself, in the annual breeder conference from Mr. Velazquez who had been working for the Mediterranean buyer in that arbitration [PO2, Question No. 40]. Mr. Velazquez then informed the CLAIMANT about a company who has the Interim Award of the other arbitration and who gave a copy to CLAIMANT. However, CLAIMANT was also not told from where the company has obtained the Interim Award of the other arbitration [PO2, Question No. 41]. CLAIMANT did not have any information about the source of obtaining the copy of award from the other arbitration. Besides, HKIAC Rules and IBA Rules are silent on any matter concerning the taking of evidence. These rules have not found any need to mention about the illegal evidence because an evidence can never be illegal. Therefore, according to doctrine of the fruit of poisonous the evidence which is in hand of the CLAIMANT is not illegal since it has not obtained it from any illegal company or search and can be submitted in the arbitration. On the other hand, HKIAC and IBA Rules have not specified any article about the illegality

of any evidence which shows that every evidence is legal to be used. Even if the evidence is considered illegal, CLAIMANT has not breached the confidentiality agreement in the contract (a).

a. Even if the evidence is illegally obtained, CLAIMANT can submit the evidence from the other arbitration.

41. It is noticeably cited in the PO2 that, "there are no specific rules on evidence in particular how to deal with evidence in breach of contractual obligation or by illicit means in the arbitration laws of Equatoriana, Mediterraneo and Danubia" [PO2, Question No. 46]. The statement clarifies that any evidence which is obtained in result of any breach of contractual obligation, can still be used. Likewise, in The Plantiff's Dillema case which was a dispute about the admissibility of illegaly obtained evidence, courts decided that, "there is no rule of law that can be invoked as binding a tribunal to exclude particular evidence" [W. Michael Resiman & Eric E. Freedman, 1982]. Doctrine of Fruit of the Poisonous Tree also confirms this view of the court by interpreting that an evidence which is considered as illegal evidence is admissible to submit it in an arbitration if the evidence was found as a result of another untainted or independent source. The doctrine puts an exception on the submission of illegal evidence and allows any evidence which is found as a result of an untainted source [Michael Tarleton]. Accordingly, investment arbitration follows that an evidence deserves to succeed on the merits even if the normal police procedures were not followed [Jeffrey Waincymer, 2012]. Moreover, the tribunal in Corfu channel case decided not to consider any exception case and rather permit any evidence which is gained illegal [Jeffrey Waincymer, 2012; W. Micheal Resiman & Eric R. Freedman, 2012]. Similarly, Mr.Hauser and Wirz confirms the admissibility of illegally obtained evidence .Because courts tend to decide on "a case by case basis" if a given document or other piece of evidence is to be admitted and there is no doctrine affirming that illegally obtained evidence shall not be used. Hence, that single illegal evidence can be the only way to prove someone's case. Therefore, CLAIMANT can submit the evidence even if it is illegal before the tribunal case to case [Bernard F. Meyer-Hauser & Martina Wirz].

B. CLAIMANT has not breached the confidentiality agreement by submitting the evidence from the other arbitration.

42. According to Mr. Waincymer, "parties are obliged to present all relevant evidence, including that which is adverse to their own interest, in part to deter misleading selectivity" [Jeffrey Waincymer, 2012]. Mr. Waincymer make the parties obligation for document production of parties which are relevant to the current case, even if it is not in their interest so that the relevant materials are all before the tribunal. Contrary to the commentary of Mr. Waincymer, RESPONDENT in this case did not disclose the other arbitration decision which was in favor of him. In the other arbitration, RESPONDENT had asked for an adaptation of the price invoking an unforeseeable change of circumstance. As it can be understood, the other arbitration decision is very important for the current case and is a very important evidence while RESPONDENT never intended to disclose it. Instead it is claiming that there has been a breach of confidentiality by CLAIMANT. In contrary, Gary B. Born oppositely says that any party shall submit the evidence to the extent that disclosure may be required of a party to pursue a legal right or challenge an award in bona fide legal proceedings before the arbitral tribunal [Gary B. Born, 2014]. Gary Born finds it a requirement and obligation for a party to bring an evidence before the arbitral tribunal to protect its legal right which means fulfilling a requirement or obligation is not a breach of confidentiality. According to Waincymer, "undue concern for confidentiality comes at the expense of transparency and the ability to promote consistency through the adoption of similar logic to other tribunals" [Jeffrey Waincymer, 2012]. The leading scholar, Waincymer also supports Gary Born that an evidence can be used from other arbitration if it is consistent and it will not be a breach of confidentiality. In the current case, CLAIMANT has disclosed the award from other arbitration because the information is the proof to win the award and protect its legal right. Therefore, CLAIMANT has not breached the confidentiality of the contract but instead it has fulfilled its obligation.

43. To conclude, under HKIAC and IBA Rules the evidence obtained from the other arbitration by CLAIMANT is not illegal. Even if, it is considered illegal it can be used in the current arbitration because of the weight of the evidence and its importance which doesn't breach

the confidentiality of the contact. Therefore, the CLAIMANT can submit the evidence from the other arbitration and is not entitled to breach the confidentiality of the contract.

ISSUE THREE: RESPONDENT UNDER THE CONTRACT AND THE CISG IS ENTITLED TO PAYMENT OF US$ 1,250,000.00 OR ANY OTHER AMOUNT ARISING OUT OF THE ADAPTATION OF THE PRICE.

44. The Frozen Semen Sales Agreement (FSSA) was based on a revised DDP delivery such that the RESPONDENT should bear all the costs. These costs included the tariffs which amount to US$ 1,250,000.00. The FSSA agreement had a determinable price and allowed modifications to the price under the DDP contract which put the responsibility of paying tariffs on RESPONDENT (A). Alternatively, even if the tribunal decides that the original contract did not assign the obligation to pay the tariffs, the claimant does not have the obligation to pay for the tariffs because the newly imposed tariffs are undue hardship under the contract and/or CISG (B). Since the claimant was not obliged to deliver under the original contract, the claimant only delivered the frozen semen relying on the respondent's promise to enter into good faith negotiation to adjust the price in light of new tariffs. The respondent violated its good faith obligation by making promises it had no intention to keep (C). Thus, RESPONDENT bears the responsibility of paying the disputed amount.

A. The determinable price of the FSSA, as well as the agreement on modification of the DDP contract based on the "unforeseen event" put the obligation of tariffs on buyer.

45. In the contract between both parties an agreement on a determinable price has taken place. The determinable price term includes provision for later inclusion of tariff (I). Additionally, considering the determinable price, the parties clearly intended to modify the usual definition of DDP price delivery (II). Thus, the RESPONDENT is responsible to pay the disputed amount arising out of the imposed tariffs.

I. The FSSA has a determinable price term which includes provision for later inclusion of the tariff.

46. The unforeseen tariffs are included in the original contract which are clearly part of the original agreed price between the parties. The contract states that the payments will take place in two instalments [page 14, Claimant Exhibit C5]. In the same contract, a clear indication of the price adjustment was included. Based on the negotiations between parties, the buyer was made responsible for the tariffs. Moreover, any implementation of the possibilities, such as unforeseen event, taken in to consideration by parties results in transfer of hardship and responsibilities to another party. The mentioned transfer of hardship and responsibilities "should not constitute a change in the contract but a modification in accordance with the terms of the contract" [SIGMA, 2016]. The hardship clause in article 12 of the contract was part of the original contract. Clause 12 of the contract talks about the hardship and transfer of specific responsibilities from CLAIMANT to RESPONDENT. One of these responsibilities is that RESPONDENT is liable for 'hardship, caused by additional health and safety requirements or comparable unforeseen events making the contract more onerous' [Page 14, Claimant Exhibit C5]. The tariffs in the case at hand are unforeseen since the tariff as a retaliatory act by the country of Equatoriana was 'a big surprise even to informed circle' [Page 15, CLAIMANT's Exhibit 6]. The retaliatory tariffs were also unforeseen due to the fact that Mediterraneo was not imposed by any such tariffs in the past [page 58, PO2]. Moreover, it is worth noting that the wordings of the hardship clause which specifically relates to the unforeseen events were added by RESPONDENT itself because they thought the ICC hardship clause suggested by Ms. Napravnik in her email of 31st March 2017 was too broad [Page 56, PO2]. Consequently, RESPONDENT had already accepted the modification of price as part of the original contract.
47. Additionally, in the FSSA signed by both parties on 6th May, 2017, RESPONDENT had agreed on the payment of 'all fees' before the shipment of semen [page 14, Claimant Exhibit C5]. 'All fees' in this case includes the tariffs resulting from unforeseen events

along with the original price of the goods which relates to the obligations of the RESPONDENT.

48. Thus, under the original contract the buyer is responsible for the tariffs and the contract allowed for the adjustment of the price accordingly. RESPONDENT bears the responsibility of paying the disputed amount under the conditions of the contract.

II. The parties intended to modify the usual DDP price and delivery term such that the responsibility of unforeseen tariff remained on the Buyer.

49. Parties entered in to a DDP contract with important modifications. Based on the intention of the parties explained under Article 8 of CISG the DDP price delivery term is modified (1). In addition to that, based on the DDP contract, parties adjusted the contract and allocated the payment of tariffs to RESPONDENT (2).

1. Under Article 8 of CISG, parties intended to modify the original DDP price delivery term.

50. Article 8 CISG is a contract interpretation rule and states that the subjective and objective intention of the parties has to be taken into consideration. Both parties in the case at hand had the subjective intention of modifying the DDP price delivery term (i). Also, based on the objective intention of the parties the DDP price delivery term was modified (ii).

i. Under the subjective intention of the parties under Article 8.1 of CISG, the price delivery term was modified.

51. Article 8.1 of the CISG discusses the subjective intention of the parties while concluding the contract. The subjective intention of both parties was to conclude that the payment price will be modified. RESPONDENT on 28 March 2017 accepted the general terms and conditions of CLAIMANT and stated that the deliveries would be "on the basis of DDP" [page 11, Claimant's Exhibit C3]. CLAIMANT in its email of 31st March 2017 clearly

stated that "we are not willing to take over any further risks associated with such a change in the delivery terms" [Page 11, Claimant's Exhibit C4]. In the same email CLAIMANT has also mentioned the costs associated with the "customs regulation or import restriction" [Page 11, Claimant's Exhibit C4]. Both of these circumstances are a clear indication of the CLAIMANT's intention to modify the price to which RESPONDENT has never objected.

52. Thus, in the case at hand, the modified DDP contract obliged the RESPONDENT to bear the costs such as payments of tariffs.

ii. Also, under the objective intention of the parties, the price delivery term was modified.

53. From a reasonable third persons point of view in the current case, CLAIMANT is entitled to receiving the disputed price. Under Article 8(3) of the CISG taking into consideration all relevant circumstances of the case including the negotiations, the reasonable third person would also award the negotiated price to the CLAIMANT. On 31st March 2017, CLAIMANT suggested inclusion of hardship clause for addressing the subsequent changes that may occur [page 12, Claimant's Exhibit C4]. On 6th May 2017, when the parties were signing the contract, a hardship clause was included. The hardship clause noticeably stated that the seller shall not be responsible for "unforeseen events making the contract more onerous" [Page 14, Claimant's Exhibit 5]. The tariffs were unforeseen events in the case at hand since such an extraordinary tariff was for the first time imposed by the country of Equatoriana [Page 58, PO2].
54. Therefore, taking in to consideration all the circumstances, from a reasonable third person's point of view CLAIMANT is entitled to receiving US$ 1,250,000.00 million.

2. The normal allocation of responsibilities of seller under a DDP contract can be adjusted by the terms of the contract.

55. Other provisions of the FSSA clearly took the contract out of the realm of a strict DDP contract. The agreement of the parties contains modifications. These modifications are based on the ICC Incoterms (i), and the established usage (ii).

i. The ICC Incoterms expressly allow for modification of the normal responsibilities of the buyer and seller under a price delivery term.

56. First, ICC incoterms expressly allow the parties to adjust the normal allocation of responsibility/obligations. One of the internationally recognized incoterms applied in this case, Delivery Duty Paid (DDP) terms, normally require that the seller be responsible for paying import tariffs. However, DDP Delivery terms can be modified by an express mention of the modifications between the parties [UN Handbook, 2010].
57. Many countries like Italy, Greece and Netherlands have come to the conclusion of modifying the results of the contracts due to the unforeseen events. The Netherlands Code provides that "upon the demand of one of the parties, the judge may modify the effects of a contract, or he may set it aside in whole or in part on the basis of unforeseen circumstances which are of such a nature that the contracting party, according to criteria of reasonableness and equity, may not expect that the contract be maintained in an unmodified form" [Netherlands Civil Code, Article 6:258]. Since there are evidences of proof for modification of contract in other laws of as well, these circumstances should balance the interests of both parties. [Schlechtriem, 1961]. In case, in the DDP contract the custom clearance, in our case the tariffs, are not cleared then the CLAIMANT can use other methods to deliver the goods [Investopedia]. Also, Phaesun states that once notification is sent to the buyer about the delivery of the product and increase in price, the risk also passes to the buyer. Furthermore, the risk of damage and carrying the costs pass from seller, CLAIMANT, to buyer, RESPONDENT, once the goods are handed over to the transportation [Phaesun].

58. Second, as RESPONDENT had stated in its email of 28 March 2017, the DDP delivery was suggested by RESPONDENT only for the purposes of "urgency of the delivery" and CLAIMANT's "much greater experience in the shipment of frozen semen" [page 14,

Claimant's Exhibit C3]. It was then that Ms. Napravnik accepted the DDP delivery and suggested a hardship clause to the contract. The hardship clause distinctly opens the ground for modification of the normal responsibilities of buyer.

59. The negotiations between the parties explained earlier as well as the clause 12 of the contract are all justifications for the change in the normal responsibilities of the parties. Thus, the responsibility of paying additional costs due to imposed tariffs as unforeseen events is with the RESPONDENT.

ii. The usage agreed between both parties, allow modification of the price under the DDP delivery

60. Parties by accepting the DDP delivery term and including the hardship clause are bound to the international trade usage. In the test of reasonable person's point of view the usages which the parties have agreed among themselves are taken in to account [CISG, Article 8(3)]. ICC incoterms as usages in the international trade are applied in the current case to which the both parties are bound to [CISG, Art. 9(2)].
61. Clause 12 of the contract is also another usage to which CLAIMANT and RESPONDENT both are obliged to apply in their practices. Clause 12 of the contract puts the responsibility of payment of any unforeseen event such as the additional cost of the retaliatory tariffs by the country of Equatoriana.
62. CLAIMANT is not considered to bear the additional costs of imposed tariffs since the adaptation of price is established as usage between the parties.

B. Alternatively, the CLAIMANT should not bear the cost of tariff because the new tariff amounts to an undue hardship under the contract and/or impediment under the CISG.

63. As explained above, the new tariffs imposed by the country of Equatoriana constitute an undue hardship under the original contract. The hardship in addition to being part of the Contract is an impediment to the obligations of CLAIMANT. Referring to CISG there are

multiple provisions which require the RESPONDENT to pay the unforeseen tariffs (I). Besides, under the Mediterraneo contract law, tariffs qualifying the characteristic of hardship is the responsibility of buyer (II).

I. Multiple provisions of CISG indicate that RESPONDENT is required to pay the unforeseen tariffs.

64. Following the explanation of hardship clause under the contract, CISG which has the law on merits of the case has several articles under which the CLAIMANT should be paid the amount of US$ 1,250,000. Under the impediment described in Art. 79 of CISG, CLAIMANT should receive the amount of imposed tariff (1). Also, general principles of the CISG applicable to the parties provide that CLAIMANT should receive the amount of imposed tariffs (2).

1. Based on article 79 CISG, RESPONDENT must pay tariffs to the CLAIMANT.

65. Based on Article 79 of the CISG, CLAIMANT is not liable for the payment of unforeseen tariffs since they constitute an impediment under CISG article 79. Article 79 states that any party for "an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract" is not held liable.
66. The imposed tariffs are part of the impediments explained under the CISG. "An impediment can be physical, such as a war or a trade embargo, or economic, which means it is a difficulty that is caused by an increase in the costs of fulfilling a contract." [Miettinen, 2015]. There are growing agreements based on which at least a rapid, unforeseeable, and extreme increase in costs constitute an impediment [Ferrari, 2005]. The tariffs in the current case was an impediment to CLAIMANT. CLAIMANT in the current case was financially not able to bear such a huge amount of tariffs. Hardship can only be found if the performance of the contract has become excessively onerous or, in other words, if the equilibrium of the contract has been fundamentally altered [Schwenzer, 2016]. The

contract has become excessively onerous since without payment of the tariffs the shipment was not possible. Also, the tariffs were beyond the control of CLAIMANT, since it was executed by the country of Equatoriana. In addition to that, CLAIMANT could not have taken in to account the tariffs since they were imposed for the first time. The tariffs also did not exist at the time of conclusion of the contract.

67. CLAIMANT was relieved from its obligation to pay damages caused by additional costs since there was impediment [Schwenzer, 2008]. CLAIMANT despite the impediment sent the frozen semen based on the promise of Mr. Shoemaker. On 21st January 2018, Mr. Shoemaker on the phone call to Ms. Napravnik stated "we will certainly find an agreement on the price" if the contract provides the increase of price [page 36, RESPONDENT's Exhibit R4]. Thus, the last shipment of frozen semen took place based on the promise from RESPONDENT. The payment of additional charges due to the tariffs were an impediment to the obligation of CLAIMANT not its responsibility. Therefore, the additional charges were to be renegotiated based on the promise of RESPONDENT and paid to CLAIMANT.

2. The general Principles found in the CISG provide the rule that CLAIMANT should receive the payment of imposed tariffs.

68. RESPONDENT under the general principles of CISG is liable for the payment of disputed money. Article 7(2) provides that in case the issue between both parties is not settled by the CISG, then the matter of concern can be solved through the general principles.

69. First, the interest of both parties, mutual benefit, should be taken in to consideration in the FSSA. According to one court, it is possible to derive a general duty from article 8 (in conjunction with article 7), pursuant to which, in performing one's own obligation, one has to take into account the interests of opposing party [CISG Digest, 2012].

70. Second, Adaptation as a result of the hardship clause is a general principle. Article 62 provides that the seller is entitled to receive the payment of purchase price from buyer. Based on the same Article, RESPONDENT in the case at hand has the obligation of paying the price including the additional price due to tariffs. Under this Art. the RESPONDENT

has to "pay the price, take delivery, perform his other obligation". As explained earlier, the price in the FSSA includes "all fees", whereas under other obligation the seller can claim for the renegotiations and adaptation of the contract price. For example, if a government charged a tariff on the export of money, the buyer would be responsible for that extra cost (absent contrary agreement) as part of the payment of the price [Gabriel, 2008].

II. If the matter is not expressly settled by either the convention text or its general principles, it must be settled in conformity with the law

71. The applicable law by virtue of the rules of private international law other than the contract and the CISG is Contracts Law of Mediterraneo which is UNIDROIT Principles. UNIDROIT clearly defines the hardship (1) and its effects for adaptation of the contract (2), based on which RESPONDENT should bear the payment of imposed tariffs.

1. The undue hardship has fundamentally altered the equilibrium of the contract under the UNIDROIT Principles.

72. Under the UNIDROIT principles (UNIDROIT) the hardship is defined. Article 6.2.2 of the UNIDROIT states that a hardship takes place when the "occurrence of events fundamentally alters the equilibrium of the contract". The equilibrium of the contract is altered when increase in cost of the party's performance takes place or the value the party receives is reduced [UNIDROIT, Art 6.2.2]. CLAIMANT clearly stated in its email of 20th January that the shipment will add 30% increase in the original price due to the application of tariffs. The tariffs were not only destroying the profit margin 5% of the CLAIMANT but also causing the financial damage to CLAIMANT [page 17, Claimant's Exhibit C8]. Such an event under the UNIDROIT should (a) occur or become known to the disadvantaged party after the conclusion of the contract; (b) the events could not reasonably have been taken into account at the time of the conclusion of the contract; (c) the events are beyond the control and (d) the risk of the events was not assumed.

73. All the circumstances of Art. 6.2.2 of the hardship are met in the current case. The hardship has fundamentally altered the equilibrium of the contract. Also, the value the party, CLAIMANT, receives is substantially diminished the hardship has taken place [Keilhack, The Hardship Approach]. Consequently, renegotiations and adaptation of the contract should take place due to the harm caused to CLAIMANT.

2. Under the effects of hardship described in UNIDROIT, CLAIMANT requests for renegotiations and adaptation of the contract.

74. The undue hardship which makes the contract paves the way for CLAIMANT to request for renegotiations and adaptation of the contract under UNIDROIT. Art. 6.2.3 of the UNIDROIT provides that in case of hardship the disadvantaged party, CLAIMANT, can demand the court to adapt the contract with a view of restoring its equilibrium. Since CLAIMANT had stated about its financial situation and the purpose of concluding FSSA to RESPONDENT, CLAIMANT requests the tribunal to adapt the contract for restoring the damage caused to it based on the conduct of both parties, and the principle of good faith.

C. CLAIMANT only delivered the products based on the RESPONDENT's promise to renegotiate the price in good faith. RESPONDENT breached it is good faith obligation, therefore, should be found responsible.

75. In addition to CISG where principle of good faith is an interpretation of the contract by both parties, UNIDROIT puts the obligation on parties that "Each party must act in accordance with good faith and fair dealing in international trade" [UNIDROIT, Article 1.1]. To interpret good faith is "to behave loyally, sincerely, honestly; to keep one's word; to keep one's promise" [Gruszczynski and Werner, 2014]. Bad faith, happens when abuse of privileges to withdraw offers, entering to an agreement without serious intention to perform and taking advantage of another party in driving low price things take place [Reitier, 1983]. Good faith's binding effect is to originate that no one should take advantage

of acts or situations which are opposing their prior conduct or promise [Reitier, 1983]. Good faith should be the bases of contract as Reiter states. Through the principle of good faith, creating the bases of contract, extension to obligation can take place. These new obligations can be created further to those agreed upon in a contract or provided by law; and amendments can be allowed to contractual provisions if changed or unforeseeable circumstances appear [Kull, 2002]. CLAIMANT, bearing good faith, has sent several notices to RESPONDENT for the payment of imposed tariffs. The last delivery of frozen semen was agreed to take place on 23rd January, 2018 [Page. 14, Claimant's Exhibit C5]. Only few days before the delivery, CLAIMANT got aware of the tariffs imposed on agricultural products by the country of Equatoriana. The tariffs were executed as a retaliatory act to the tariffs imposed by President Boukaert of Mediterranio on 19 December 2017 [Page. 58, PO2]. CLAIMANT after getting aware of the tariffs contacted the customs clearance and received the respond via email on January 20 that tariffs are applied to frozen semen as well [Page 58, PO2]. CLAIMANT out of its good faith after receiving the email in the same morning sent an email in addition to calling and leaving a message on voicemail to RESPONDENT, about the additional expenses [Page 16, Claimant's Exhibit C7]. RESPONDENT despite being aware of the damage on the financial situation from the first negotiations still does not bear its responsibility of payment of tariffs [Page 59, PO2]. Also, Respondent was aware that the unforeseen tariffs destroys 5% profit margin of CLAIMANT and caused more damage to its financial situation [page 17, Claimant's Exhibit C8]. However, CLAIMANT taking in to consideration the time delivery which was important to RESPONDENT authorized the last shipment on time [Page 18, Claimant's Exhibit C8]. Therefore, RESPONDENT must bear the responsibility to pay for the tariffs under the terms of original contract, or alternatively, because it has violated its obligation to enter into good faith negotiation to adopt the price in light of new tariffs.

STATEMENT OF RELIEF:

76. In light of the above submission, council for claimant respectfully requests the tribunal to:

1) Based on the agreement of parties, CISG governs the arbitration agreement which gives tribunal the jurisdiction and/or powers to adopt the contract.

2) CLAIMANT is entitled to submit evidence from the other arbitration proceeding which will not breach the confidentiality of the contract

3) RESPONDENT under the contract and the CISG is entitled to payment of us$ 1,250,000.00 or any other amount arising out of the adaptation of the price

Certificate and Choice of Forum

To be attached to each Memorandum

I _____Fariha Khaliqi_____, on behalf of the Team for (name of School)

___American University of Afghanistan (AUAF) _____ hereby certify that the attached memorandum was prepared by the members of the student team, and that no person other than a student team member has participated in the writing of this Memorandum.

Check off the boxes as appropriate:

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

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

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

Or

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

☐ Vis East Moot in Hong Kong, or

☐ Vienna Vis Moot

Authorised Representative of the Team for (School name) __American University of Afghanistan__

Name_____Fariha Khaliqi_____

Signature _____