FIFTH ANNUAL

INTERNATIONAL ALTERNATIVE DISPUTE RESOLUTION

MOOTING COMPETITION

27 JULY-2 AUGUST 2014

HONG KONG

MEMORANDUM FOR RESPONDENT

ON BEHALF OF:	**AGAINST**
Conglomerated Nanyu Tobacco Ltd.	Real Quik Convenience Stores Ltd.
CLAIMANT	**RESPONDENT**

TEAM NO.753

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Probably the most important principle on which the model law should be based is the freedom of the parties in order to facilitate the proper functioning of international commercial arbitration according to their expectations. *This would allow them to freely submit their disputes to arbitration and to tailor the "rules of the game"to their specific needs.It would also enable them to take full advantage of rules and policies geared to modern international arbitration practice as, for example, embodied in the UNCITRAL Arbitration Rules.*

(para 10)

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Article 19(1)

Article 19. Determination of rules of procedure

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

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(A ship was required, under a charterparty, to proceed from Liverpool to Newport to load a cargo for San Francisco. On the first day out from Liverpool, the ship ran aground, and it took six weeks to refloat her as well as another six months to complete repairs. The Court held that the charterparty ended upon the mishap, as the jury had found that ‘a voyage undertaken after the ship was sufficiently repaired would have been a different voyage (…) different as a different adventure (…)’
(Para30)

Chandler V. Webster

Chandler v. Webster, [1904] 1 K.B. 493;
McKendrick, id., at para. 24-070/71; Treitel, id., at 848-49.
(Para30)

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CIETAC	*China International Economic and Trade Arbitration Commission*
CISG	*United Nations Convention on Contracts for the International Sales of Goods of 1980* Available at: *http://www.cisg.law.pace.edu/cisg/text/treaty.html*
Model Law	*United Nations Commission on International Trade Law, UNCITRAL Model Law on International Commercial Arbitration 1985 with amendments as adopted in 2006* Available at: *http://www.uncitral.org/pdf/english/texts/arbitration/mlarb/06-54671_Ebook.pdf*
UPICC	*International Institute for the Unification for Private Law UNIDROIT Principles of International Commercial Contracts 2010 Available at: http://www.unidroit.org/english/principles/contract /principles2010/integralversionprinciples2010-e.pdf*
NY Convention	*Convention on Contracts for the Enforcement of Foreign Arbitral Awards 1958*

ICSID	*International Centre for Settlement of Investment Disputes*

ABBRIVIATION

Art	Article
CIETAC	China International Economic and Trade Arbitration Commission
CISG	United Nations Convention on Contracts for the International Sales of Goods of 1980
Cls	Clause
Cl	Claimant
Claimant	Conglomerated Nanyu Tobacco Ltd
DS	Distribution Agreement
Ex.	Exhibit
ICSID	International Centre for Settlement of Investment Disputes
NY	New York Convention
New Regulations	Bill 275 and other more stringent regulations the Gondwana government implemented
P/PP	Page/Pages
Pro ord	Procedure Order
Re	Respondent
Respondent	Real Quik Convenience stores Ltd
SUK	Stock Keeping Units
The parties	respondent and claimant
UPICC	UNIDROIT Principles of International Commercial Contracts 2010
V.	versus
Government Statement	Pending Arbitration between Conglomerated Nanyu Tobacco Ltd And Real Quik Convenience Stores Ltd.

STATEMENT OF FACTS

1. The Conglomerated Nanyu Tobacco Ltd [referred as Claimant] and the Real Quik Convenience stores Ltd [referred as Respondent] are long term cooperated partners in the field of sales of tobacco products in the Gondwana state, . Both parties entered in to a ten year's sales contract [referred as the Distributed Agreement] on 14 December 2010. Under the contract, the respondent is obliged to buy at minimum quantity 10,000,000 cartons and/or packages of tobacco products and 8,000,000 SKU Branded Merchandise per year from the claimant and sell in Gondwana. There are also specific display requirements that needs to be satisfied by the respondent.

2. On 14 March 2011 the Gondwana senator introduced Bill275 which passed on 13 April 2012 and then entered into force on 1 January 2013. Bill 275 has a significant influence on the sales and consumption of tobacco products in Gondwana. And Bill 275 contains more stringent regulation such as plain packaging regulations and the ban of promotional merchandise sales than any other regulations the government has ever implemented. Because of Bill 275, the respondent can no longer sell Branded Merchandise in the state as they are considered as promotional merchandise and can not longer display the products with their logos and trademarks prominently display as the contract required.

3. At the negotiation on 11 April 2013, the claimant refuse to make any adaption in accordance with Bill 275, leaves the Respondent no choice but to terminate the contract on 1 May 2013, as continue performing the contract would be a violation of Bill 275. Respondent claim that Bill 275 has made it impossible for the respondent to continue performing its obligations under the contract any more.

4. Claimant accepted the termination yet claim for liquidated damage, which is $75,000,000 as Cls 60 in the contract regulates. Respondent refused to pay the penalty and claim that the termination was due to the implementation of Bill, which is an impediment that complies with the requirements of exemption according to CISG Art 79, thus the dispute arise.

SUMMARY OF ARGUEMENT

1. PART ONE: THE ARBITRAL TRIBUNAL HAS NO JURISDICTION TO DEAL WITH THIS DISPUTE IN LIGHT OF THE 12 MONTH NEGOTIATION PERIOD STIPULATED IN THE ARBITRATION AGREEMENT UNTIL 1 MAY 2014

According to the previous arbitration clause,it is clear that when a dispute arise, the 12 months negotiation period period must be satisfied before submitting the dispute to arbitration, constituting a compulsory clause.However, at the time when claimant submit for arbitration, the twelve month negotiation period was yet left to be accomplished .Therefore, the arbitral tribunal have non jurisdiction over the case as the arbitration clause has not yet become effective. Moreover, the parties'autonomy should be respected.

2. PART TWO: EVEN IF THE ARBITRAL TRIBUNAL HAS THE JURISDICTION,THE ARBITRAL TRIBUNAL SHOULD TAKE THE GONDWANA'S AMICUS CURIAE BRIEF INTO CONSIDERATION DURING THE PROCEEDINGS

This amicus curiae is provided by the Gondwana Department of the State. Considering that the award would be enforce in the Gondwana state, it is very necessary that the opinion of the legal department of the state should be heard in the tribunal.And as for the content of this amicus curiae ,the amicus curiae could give the tribunal a better knowledge of the situation in the state thus help the tribunal to make a fair award. Furthermore ,this amicus curiae has no compulsory function upon the tribunal, it is just for advisory and consultation.

3. PART THREE: THE RESPONDENT'S OBLIGATIONS UNDER THE CONTRACT WERE VITIATED BY THE IMPLEMENTATIO OF BILL 275 AND THE GOVERNMENT'S MORE STRINGENT REGULATIONS.

The implementation of Bill 275 and other regulations has make the contract impracticable, the respondent cannot perform without breaking the law. Since the implementation of Law is an element not up to the respondent's control and is unforeseeable in the state, the requirements under CISG 79 were satisfied, the respondent is not liable for its termination of the contract, which is also known as non performance of the contract.

4. PART FOUR: THERE WOULD BE A RISK OF ENFORCEMENT IF THE TRIBUNAL WERE TO ISSUE AN AWARD IN FAVOR OF THE CLAIMANT.

As it is recognized by the government that the respondent's termination of the contract was due to the implementation of Bill 275, and that the government fully supports that respondent for the reason of safeguarding the effect of Bill 275 and ensuring its enforcement in the state, there would certainly have a risk of enforcement if the tribunal were to ignore the government's sovereignty over this case and the public policy of protecting public health and safety by reducing smoke and issue an award in favor of the claimant.

ARGUMENT

I THE ARBITRAL TRIBUNAL HAS NO JURISDICTION TO DEAL WITH THIS DISPUTE IN LIGHT OF THE 12 MONTH NEGOTIATION PERIOD STIPULATED IN THE ARBITRATION AGREEMENT UNTIL 1 MAY 2014

1. Pursuant to Art. 6(1) of CIETAC Rules under which this Tribunal was constituted, the Tribunal is competent to determine the existence and validity of an arbitration clause and decide its jurisdiction over a case.
2. In fact, the jurisdiction of a tribunal is concluded by three elements.(A)arbitration agreement (B)a dispute has arisen (C)the appointment of arbitrator.（<from 1996 England arbitration law to international &commercial arbitration,Yang Liangyi, chapter5，section1 'source of jurisdiction')

[A]arbitration agreement
3. The arbitration clause in the contract[Cls 65, Cl Ex. 1/P11]:

"In the event of a dispute, controversy, or difference arising out of or in connection with this Agreement, the Parties shall initially seek a resolution through consultation and negotiation.

If, after a period of 12 months has elapsed from the date on which the dispute arose, the Parties have been unable to come to an agreement in regards to the dispute, either Party may submit the
dispute to the China International Economic and Trade Arbitration Commission (CIETAC) Hong Kong Sub-Commission (Arbitration Center) for arbitration which shall be conducted in accordance with the CIETAC's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties. The arbitration shall take place in Hong Kong, China. The arbitration shall be in the English language."

4. In the arbitration clause it is stipulated that, any difference arising in connection with this agreement, should go to consultation and negotiation as a previous step before arbitration. Further, in the arbitral clause, shall was used to refer to negotiation and consultation while may to arbitration.

5. Refer to the definition of shall and may in Oxford dictionary of law:

“shall,vb.1. Has a duty to; more broadly, is required to <the requester shall send notice>
<notice shall be sent>. • This is the mandatory sense that drafters typically intend and that courts typically uphold. “
“May ,Loosely, is required to; shall; must ”

6. That indicates that consultation and negotiation at the period of least 12 months is a necessary step while arbitration a selective one.

7. In the arbitration clause, it is stipulated that the consultation and negotiation period starts from the arising of dispute should last for 12 months at minium as a pre-condition before going to the arbitration. While such pre-condition clause exist, the requirements has to be satisfied first then could the parties submit for arbitration [ICC Case 6276].

9. The 12 month period is a refection of the “parties’ autonomy”, which should be respected by the arbitral tribunal.

10. Probably the most important principle on which the model law should be based is the freedom of the parties in order to facilitate the proper functioning of international commercial arbitration according to their expectations. This would allow them to freely submit their disputes to arbitration and to tailor the "rules of the game"to their specific needs.It would also enable them to take full advantage of rules and policies geared to modern international arbitration practice as, for example, embodied in the UNCITRAL Arbitration Rules.

Model Law

Article 19. Determination or rules on procedure

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

11. It also showed the significance of the party autonomy.
12. The reason why the claimant and respondent both agreed on the12 months negotiation period initially is both parties' consideration of the long-lasting business relationship which has exceeded 10 years, and the hope of continue cooperation through establishing a cooling period after a dispute arise and an effort to resolve the dispute in a peaceful way. Only after the 12 months period had elapsed, and no opportunity of cooperation could be seen then arbitration is available.

13. At the time when the claimant submit the dispute to the arbitration , the 12months period had not elapsed. The tribunal thus have no jurisdiction over this case since the pre condition has not been met, neither party has the right to submit this dispute to arbitral as it would be a dishonor of the parties' autonomy.

14. The Claimant argues that the Parties had already attempted to negotiate on 11 April 2013, and that as that negotiation was fruitless, there would be no point in waiting for a full 12 months after the dispute arose to submit its claim to arbitration[facts 22/P 6]. However, the negotiation and consultation was a procedural formality and has a specific period. Both parties' intention of setting a period can only be explained as one negotiation is far not enough, and not until this period has been met neither party is entitled to search for any other resolution.

15. Further, it is also recognized by the claimant that the twelve month period has not been met[Facts 22/P6]. Claimant express exactly that there would be no point in waiting for a full 12 month after the dispute arose.

(B)A dispute has arisen

16. The actual dispute arising time is 1 May 2013, when the respondent terminated the contract. And according to the claimant's alleged relief, the request is to claim $75,000,000 liquidated damage, which did not occur until the respondent terminated the contract.

17. Upon a written application of a party, CIETAC shall accept a case in accordance with an arbitration agreement concluded between the parties either before or after the occurrence of the dispute, in which it is provided that disputes are to be referred to arbitration by CIETAC [Art 13 CIETAC].

18. The definition of dispute is: ‘Dispute : A conflict or controversy ,is the one that has given rise to a particular lawsuit [Black Dictionary].’ There are two main kind of appeals, litigation and alternative dispute resolution, and arbitration is in the scope of dispute resolution.

19. The dispute in this case is the dispute that the claimant submitted to the tribunal, which is directly arising out of the respondent’s termination of the contract, not the respondent’s non performance before the termination.

20. Thus, calculation of time should start on 1 May 2013, and at the time when claimant submit the dispute to the tribunal, which was 12 January 2014, the 12 month period has not been satisfied.

II EVEN IF THE ARBITRAL TRIBUNAL HAS THE JURISDICTION,THE ARBITRAL TRIBUNAL SHOULD TAKE THE GONDWANA’S AMICUS CURIAE BRIEF INTO CONSIDERATION DURING THE PROCEEDINGS

21. There is no specific compulsory law to prohibit the arbitral tribunal to take the amicus curiae into consideration in proceedings.

22. Taking the amicus curiae into consideration in proceeding, it’s essentially for the tribunal to take it into consideration, which does not mean that the tribunal is manipulated by the Gondwana’s government, but for full consideration of the recognition and enforcement of the arbitration award. The tribunal has the right to admit the amicus curiae[A]. The tribunal should admit the curiae for a full knowledge of the situation in the state [B]. Further, the tribunal also need to consider the enforcement ans recognition of the award in Gondwana state [C].

A. The tribunal has the right to admit the amicus curiae

23. Use for reference, The arbitral tribunal can take the amicus curiae for consideration [Universal V. Argentina]. Order in response to a Petition for transparency and Participation as Amicus Curiae 19 May 2005, para. 19): “Courts have traditionally accepted the intervention of amicus curia in ostensibly private litigation because those cases have involved issued of public interest and because decisions in those cases have the potential, directly or indirectly, to affect persons beyond those immediately involved as parties in the case”.(See also,Gauff V. Tanzania).

B. The tribunal should admit the curiae for a full knowledge of the situation in the state

24. The Gondwana Legal Department clarified that the arbitration proceeding is against the public policy [para 6/P32]. The tribunal should hear not only from the respondent and claimant, should also hear the opinion of the government in order to have a full picture in mind when making the arbitration award. It is the one and only way for the tribunal to know exactly what the situation is in the Gondwana state.

C. The tribunal also need to consider the enforcement ans recognition of the award in Gondwana state

25. This amicus curiae was put forward by part of the State Legal Department,which has showed the attitude of the Government's Legal Department.To make sure the following arbitration Award can have a Operational effectiveness ,The arbitral tribunal should take the Statement from the Legal Department into consideration for consultation in the proceeding. According to NY Convention,article5(b (section b) and the Model law A36(1) section (B)item (h) 2.Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that: (b) The recognition or enforcement of the award would be contrary to the public policy of that country. According to the international convention, violation of the countries'public policy can be a reason for refusal to acknowledgment and enforcement of foreign arbitration awards.

III. THE RESPONDENT'S OBLIGATION UNDER THE CONTRACTWERE VITIATED

26. The unitary concept of 'non-performance'. The word 'nonperformance'is used as a general term covering any failure to perform, for whatever cause [Enderlein/Maskow]. It is also relevant that the obligation a party failed to perform is a 'principal obligations'[see Art. 30 CISG]. Respondent terminated the contract, meaning non of the obligations under the contract would be performed in the future. This is falls within the definition of non performance. According to CISG Art 79, a non performance should be exempted if it is in comply with the conditions [CISG]. In this case, CISG is the governing law of disputes arising out of the agreement [A]. The implementation of Bill 275 and the Gondwana government's new more stringent regulations has constituted the impediment that could exempt the respondent from liability [B]. The result of applying CISG Art 79 is that the claimant is deprived of the right to claim damage [C].

A. CISG is the governing and prevailing law of the DA.

27. The CISG of 1980 has been regarded as part of the common core of the legal systems,adopted by more than seventy countries in the world [Legislative History and Commentary], including Nanyu and Gondwana. Further, both parties agree that the governing law of the DS is the CISG, and for matters not governed by CISG, supplemented by UNIDROIT Principles of International Commercial Contracts.[DS Art 66]. The dispute was arising out of the agreement [1]. The dispute falls within the governing scope of the CISG [2]. There are clause in the CISG that could governed the aforesaid dispute [3].

1.The dispute was arising out of the agreement.

28. The dispute here is whether the respondent should pay the liquidated damage as it has terminated the contract. Respondent argues that it could no longer perform and claimant argues that since respondent has terminated the contract, according to Cls 60 in the contract, respondent should pay the liquidated damage. The dispute was in direct connection with the agreement.

2. The dispute falls within the scope of the CISG.

29. CISG applies to contracts of sales of goods between parties whose places of business are in different states that are contracting states or the rules of private international law lead to the application of the law of a contracting state [CISG Art1]. Nanyu and Gondwana are both parties to the CISG and they are different states, thus CISG can be applied to this dispute.

3. There are articles in the CISG that can govern this dispute.

B.The implementation of Bill 275 and other regulations of the government constituted the impediment in accordance with CISG Art 79 that exempts a party from non-performance.

30. After Bill 275 came into force, the contract has been frustrated. The definition of Frustration was first established in 1863 [*Taylor V. Caldwell*], where the physical subject of the contract has been perished. Nowadays the doctrine has been extended where the commercial adventure envisaged by the parties was frustrated [*Jackson V. Marine*]. The contract has been frustrated in two aspect and the respondent’s termination of the contract mainly based on the frustration. The goal of the contract can no longer be achieved, parties are released from their duties [*Chandler V. Webster*]. Further, the respondent can no longer perform its duty legally. Therefore, the non performance is reasonable and could be exempted[CISG Art 79].

31. Three requirements has to be met in order to claim exemption, which are: (i) The non-performance must be "due to an impediment" [1]; (ii) the impediment must have been "beyond his control" [2]; (iii) it must be one which he could not reasonably have been expected to take into account when the contract was made and which (or the consequences of which) he could not reasonably have been expected to avoid or overcome [3] [International Sales].

1. The non performance was due to an impediment

32. The respondent's termination of the contract, also known as future non performance, was due to the implementation of the New Regulations. In two aspect the implementation of New Regulations had led to the non performance of the respondent. Firstly the implementation of New Regulations directly forbid the respondent from performing part of its duties under the contract, [*i*]. Following, continue performing the contract had become economically hard for the respondent [*ii*]. It has established that economic hard ship can be recognized as an impediment in accordance of the CISG Art 79 [*Scaform V. Lorraine*] [*iii*].

i. The implementation of New Regulations directly forbid the respondent from performing its duty

33. Under the contract, the respondent has the following obligations:

(1) display promotional materials and tobacco products in its counters with the sellers logos and trademarks prominently displayed [Cls 25, P10, Cl Ex. 1];

(2) sell promotional merchandise in its stores [Facts 6, P3].

34. However, Bill 275 clearly regulates that:

(1) No trademarks or marks may appear on the retail packaging of tobacco products other that as permitted, which are brands, business or company name[Cl Ex. 2, PP13-14];

(2) No manufacturer, distributor, or retailer may distribute or cause to be distributed any material containing or displaying trade marks or marks, in a word, promotional merchandise [Cl Ex.2, P 14].

35. Seeing from above , the implementation of the New Regulation has rendered impracticability to the respondent, under which the respondent's obligations could be discharged [Frustration and Force Majeure, para. 6-048.]

Seeing from the above, continue performing the contract was a direct violate of the existing law. The respondent simple can't display in accordance with the contract and can no longer buy promotional merchandise from the claimant and sell in the state. Also, since the respondent can't sell promotional products in the state, the goal of the contract has been compromised, continue performing would be meaningless ans unreasonable. The respondent therefore cannot continue performing the contract after Bill 275 came into force.

ii. Continue performing the contract has become economically hard because of the implementation of Bill 275

(1) The sales of tobacco products in the country has declined significantly; the consumption amount do not meet the purchase amount regulated in the contract

34. The implementation of the New Regulations has caused the decline of the sales of tobacco products in the state. Bill 275 came into force at 1 Jan 2013, and the estimation of sales of tobacco products was made between 1 Jan 2013 and 1 June 2013. And estimation showed that the sales in the state experienced an average 30%decline and the claimant also suffered approximately an 25%decline compare to the same period last year [Facts 13, P5].

37. According to the contract, the amount of tobacco products and promotional merchandises the respondent is obliged to buy has been stipulated and now the respondent is obliged to buy more tobacco products than it could sell in the state.

(2) The 20% price premium became no longer necessary or reasonable to exist as the brand advantage of the claimant's has been diminished by the regulation over packaging.

38. The respondent is currently paying a 20% price premium to the claimant considering the claimant's dominant position in the worldwide tobacco market [Facts7, P4]. However, the claimant has lost its brand advantage since the New Regulations has excluded all trademarks and brands in tobacco packagings, making the claimant's products not so extinguishable from other brand tobacco products. Thus the existence of the price premium has become unreasonable and unnecessary.

iii. Economic hardship has been recognized as an impediment in accordance with CISG Art79

39. It would be economically hard for the respondent to perform the contract since the sales in the country has declined as Bill 275 came into force, and that according to the contract, the amount of tobacco products the respondent is obliged to buy from the claimant has not changed with the situation, therefore led to the result that the claimant's products keeps piling up in the respondent's stockrooms and yet the respondent is obliged to continue buying more [Cl Ex.8/P20]. The respondent not only does not have enough stockrooms for the claimant's products, also keeps buying products that it could not sell not could not sell out. Since the decline of sales was due to the implementation of Bill 275, this is not a business risk the respondent was supposed to take.[source] In case Scaform V. Lorraine, an precedent has been established that economic hardship could be recognized as the impediment un CISG Art79 [Scaform V. Lorraine].

2. The impediment must have been "beyond his control"

40. The impediment was the implementation of Bill 275 and the Gondwana government's other regulations. After Bill 275 was introduced, before it came into force, the claimant sue against it and the supreme court ruled that the Gondwana government have the power to institute regulations protecting public health and safety, indicating that both of the country's legislation department and the government have recognized protecting public health and safety as a public policy in the state. Neither the clamant or the respondent is capable of resisting it or overcome it.

3. It must be one which he could not reasonably have been expected to take into account when the contract was made and which (or the consequences of which) he could not reasonably have been expected to avoid or overcome

41. At the day of 22 June 2009, the Excerpts from the Gondwana Herald estimated that it is highly unlikely that the Gondwana government will continue to implement stricter regulations [Re Ex.1]. As the Gondwana Herald is a major and reputable publication in the Gondwana state, it is reasonable to deduct that the opinion the newspaper expressed has a dominant lead of the state's main stream of opinion over the issue. The respondent could not have reasonable foresee that there would be any more stringent regulation coming against what the Herald suggested.

C. The effect of applying CISG Art 79 is that the respondent is not liable for non performance, the claimant is deprived of the right to claim damage.

42. If a party is exempted under CISG 79, both party are deprived of the right to claim damage[CISG Art 79, (5)]. The claimant is claiming damage base on the respondent's termination, however, the respondent's termination of the contract was because of an impediment that has influenced its performance and was in comply with CISG Art79, therefore, applying CISG Art79, nothing in this article prevents either party from exercising any right other than to claim damage. Further, should not be supported.

IV. THERE WOULD BE A RISK OF ENFORCEMENT IF THE TRIBUNAL WERE TO ISSUE AN AWARD IN FAVOR OF THE CLAIMANT.

43. Nanyu and Gondwana both signed the NY Convention, thus are both governed by it. [Facts 24]. Although national law cannot be of basis to refusal of enforcement [Gaja, Preparatory Work], NY convention has provided a country the right to objection. A country is entitled to refuse enforcement of an arbitral award if the award or the enforcement of the award is against the country's public policy [NY Convention]. The public policy in Gondwana state is the government's duty to protect public health and safety [A]. The enforcement of an award in favor of the claimant goes against such policy [B]. The government has made its position clear that such an award would not be enforced base on the aforesaid reason [C].

A. Protecting public health and safety has became the Gondwana state's public policy

44. As international public policy has been considered sufficiently well established to be used as the test of enforceability by state courts, it is necessary for us to apply the concept in this case for reference [The Third Report]. International public policy includes: *i.* fundamental principles, pertaining to justice or morality, that the state wishes to protect even when it is not directly concerned; *ii.* Rules designed to serve the essential political, social or economic interest of the state, these being known as *"lois de police"* or "public policy rules"; and *iii*. The duty of the state to respect its obligations towards other States or international organizations [The Final Report].

45. Gondwana's policy of protecting public health and safety falls within the scope of international public policy; it is a rule designed to serve the country's essential social interest. The supreme court has also recognized it as the government's duty and sovereignty [Re Ex.2/P29].

B. Enforcement of an award in favor of the claimant is against this policy

46. The claimant claimed liquidated damage towards the respondent's termination of the contract, however, the termination was directly caused by the implementation of Bill 275. An award in favor of the claimant would be a denial of the impact that Bill275 has over the respondent. Because the respondent only terminated the contract because Bill275 has a direct and an indirect influence on it's perform of the contract. Such an award would be a challenge to Bill275 and as well to the Gondwana government's sovereignty. The Gondwana government also clarified that the claimant's arbitration proceedings in this matter will only serve to undermine Gondwana's sovereignty right to regulate and control its public policy [Government Statement].

C. The government has made its position clear that such an award would not be enforced base on the aforesaid reason.

47. As Bill 275 came into force on 1Jan2013, the contract became partially a direct violation of the aforesaid law, as Bill 275 forbid sales of promotional products in the country and tobacco packaging is strictly regulated, thus display requirement became illegal[Cls 25, DA/P10]. It is reasonable and legal and necessary that the respondent terminated that contract and the respondent has the government's full support upon this termination [Cls13,Pro ord2/P37].

Request for relieve:

41. In the event that the tribunal finds that it has jurisdiction to decide on this dispute, the Respondent claims the following relief:

a. A declaration that this Tribunal has no jurisdiction to decide the dispute between the Parties;
b. Alternatively, a declaration that the Agreement has been Frustrated; and
c. That due to the Agreement being frustrated, that the Respondent is not liable to pay any alleged termination penalty.