# RARE METALS CASE

## I. Red shall pay Blue $5,000,000 for breaching its obligation to supply Tungsten to Blue

**<Summary of Blue's Submission regarding the first issue>**

This issue is about transaction of the rare metals between Blue Inc. ("Blue") and Red Corporation ("Red"). On August 1st, 2000, Red and Blue entered into *Exhibit 6* Agreement ("Priority Supply Agreement"). From Priority Supply Agreement, Red was obliged to supply Tungsten preferentially which are ordered by Blue from September 2015 to March 2016. However, Red provided Tungsten to Black Negoland, neglected preferential supply to Blue. Accordingly, based on UNIDROIT Principles of International Commercial Contracts [*UNIDROIT*] 7.4.1 to 7.4.7, Red is under non-performance of obligation.

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### 1. <u>Red was obliged to supply Tungsten preferentially to Blue.</u>

Red was obliged to supply Tungsten preferentially to Blue in accordance with Priority Supply Agreement. In the absence of a stipulated term "*tungsten*" on Priority Supply Agreement, Tungsten shall be included in "*rare metals*" in two ways. (1) Defining the term of "*rare metals*" and "*affiliate*" by the interpretation according to the common intention of the parties [*UNIDROIT 4.*1] or (2) formation of Priority Supply Agreement renewal [*UNIDROIT 2.1.1*]. In this case, Red was obliged to provide Tungsten preferentially to Blue as following (1) or (2).

In terms of "*in precedence to other prospective purchasers in other countries than Negoland*" on Priority Supply Agreement, there was a negotiation between parties regarding purpose and circumstances to embark preferential supply of rare metals [*Paragraph* ("¶") *12*]. The term shall be interpreted according to this preliminary negotiations between the parties [*UNIDROIT 4.3 (a)*].

#### (1) Priority Supply Agreement shall be interpreted according to the common intention of the parties [*UNIDROIT 4.1*] as below;

##### (a) <u>*"rare metals"*</u>

Red's obligation was to supply "*the rare metals, **such as** Nickel and Titanium*" to Blue. Considering the meaning commonly given to terms and expressions in the trade concerned, the phrase "*such as*" means illustration [*UNIDROIT 4.3 (e)*]. It shows that "*Nickel and Titanium*" is just an example of "*the rare metals*" in Priority Supply Agreement.

Moreover, after the conclusion of the contract, both parties embarked on Platinum-related transactions [¶*14*], which had been conducted without any trouble [¶*16*] by Red supplying rare metals preferentially to Blue [¶*15*,*16*]. Even though Red had commented that the priority supply was only in the range of Nickel and Titanium in 2015 [*Exhibit 10*], both parties embarked on and continue Platinum transactions without revising Priority Supply Agreement since 2003. The fact of Platinum transaction is sufficient conduct to show their common intention that "*rare metals*" in Priority Supply Agreement is not limited to Nickel and Titanium [*UNIDROIT 4.3 (c)*].

**(b) *"affiliate"***

This term shall be interpreted as all affiliate of Red. If this intention was only to supply rare metals that was produced by Negoland Metals, the provision should have been "Red or Negoland Metal Corporation". But the reason why the contract states *"affiliate"* is because Blue had the intention [*UNIDROIT 4.3 (a)*] to use the plant replacement project of Nickel and Titanium as a chance to expand its trade of rare metals [¶*9*] in a perspective of *"long-term"* [¶*12*]. In light of the intention and comments, Blue had the intention of using Negoland Metal Corporation "*plant replacement project as a stepping stone to expand*" [¶*11*] it's rare metal import deals with Red.

Accordingly, Red was obliged to provide rare metals, which are produced by Red or its affiliate.

**(2) Even if the range of *"rare metals"* limited on Nickel and Titanium, or the rare metals which are produced by Negoland Metals, Priority Supply Agreement was renewed to include Tungsten.**

**(a) There was the acceptance of an offer of the parties which is sufficient to show the renewal of Priority Supply Agreement [*UNIDROIT 2.1.1*].**

In the conversation of ¶*19*, Fox (Red) had offered to *"give priority for tungsten"* and both parties had accepted that Priority Supply Agreement was renewed to include Tungsten in "*rare metals*". This offer and acceptance are sufficient to show the renewal of Priority Supply Agreement.

**(b) Even if there wasn't an acceptance of an offer of the parties, there was a conduct of the parties that is sufficient to show Priority Supply Agreement was renewed [*UNIDROIT 2.1.1*].**

From September to October 2015, Red supplied its Tungsten products corresponding to Blue's order [E*xhibit 9*]. On November 2015, Orange (Red) remarked that "*I understand that our company has promised Blue Inc. to prioritize Blue in our exports of rare metals*" [¶*22*]. Red had recognized that September to October supply of Tungsten to Blue was based on Priority Supply Agreement.

The conduct that Red supply Tungsten preferentially to Blue was sufficient to show that Priority Supply Agreement was renewed.

Accordingly, Red was obliged to supply Tungsten preferentially.

**(3) "*in precedence to other prospective purchasers in other countries than Negoland*" in Priority Supply Agreement shall be interpreted as "Red supplies rare metals to Blue in precedence to other prospective domestic sale aimed purchasers in other countries than Negoland" by both parties' common intention [*UNIDROIT 4.1, 4.3*].**

**(a) There was a common intention created by meeting in July 2000 [*UNIDROIT 4.3 (a)*].**

At meeting in July 2000, Fox (Red) remarked that *"We can't touch the rare metals earmarked for sales within Negoland"* and Ruby (Blue) *"Let's agree on*

*US$70 million on condition that your company will give priority to the supply to us except what you need for domestic sales"* [¶*12*]. In light of both remarks, both parties had common intention that rare metals produced by Red or its affiliate for domestic sales should be reserved with top priority, and remaining portion should be shipped preferentially to Blue.

**(b) The nature and purpose of Priority Supply Agreement was to prioritize Blue who provides world-class technology [¶*10*] with discounted price [*UNIDROIT 4.3 (d)*].**

Priority Supply Agreement from Red to Blue was terms of an exchange by Blue to discount the construction price of new plant for Red [¶*12*]. There was a purpose of Priority Supply Agreement to prioritize Blue among foreign companies as a consideration for providing world-class technology with discounted price to Red. In light of this purpose, Blue should be prioritized most among foreign companies especially prospective competitors of Blue like trading company.

Regarding the preliminary negotiation of the parties and the nature and purpose of Priority Supply Agreement, Red was obliged Blue to supply rare metals which are produced by Red or its affiliate preferentially among foreign companies, and only use for domestic sales shall be prior to Blue.

**2. Red did not perform its obligation to preferentially supply Tungsten.**

Although Red was obliged Blue to supply rare metals which provided by Red or its affiliate in precedence to other prospective purchasers in other countries than Negoland based on Priority Supply Agreement, Red did not perform its obligation. Red did not supply Tungsten (one kind of rare metals) which is provided by Negoland Tungsten (wholly owned subsidiary of Red [¶*21*]), to fulfill order from Black Negoland [¶*22*].

**(1) Red did not perform its obligation to prioritize Blue in terms of Tungsten supply by supplying to Black Negoland.**

Black Negoland was a wholly owned Negoland subsidiary of Meditria-based Black Corporation ("Black") [¶*22*]. However, in light of the conversation between Orange (Red) and Nomura (Black), the purpose of Black Negoland foundation was only to export Tungsten outside of Negoland on behalf of Black. Black Negoland wasn't a company to sale Tungsten domestically.

Moreover, in light of the conversation between Orange and Nomura, Black Negoland was a company to avoid Priority Supply Agreement between Red and Blue [¶*22*]. Admitting establishment of subsidiary and supplying to that subsidiary for prioritizing other foreign companies than Blue is against nature and purpose of Priority Supply Agreement.

Accordingly, the conduct by Red supplying Tungsten to Black-Negoland prior to Blue is non-performance of the obligation based on Priority Supply Agreement.

**(2) Non-performance by Red shall not be excused by force-majeure [*UNIDROIT 7.1.7*].**

Red may submit that non-performance of the obligation based on Priority Supply Agreement shall be excused due to a drop in Tungsten production capacity to 1/3 of the normal level by record rainfall in October 2015 [¶*21, 22*]. However, Red's total

production quantity from November 2015 (40 tons) still meets Blue's order (20 tons) if Red rejects 20 tons order by Black [*Exhibit 9*]. It means Red could supply Tungsten to Blue after the drop of Tungsten production capacity.

Accordingly, exemption from the obligation by force-majeure shall be dismissed.

3. **Red shall pay US$5,000,000 to Blue based on the non-performance shown above.**

Red had never accepted Blue's order of Tungsten from November 2015 to March 2016 [¶*22*]. Blue would have reaped a profit of US$5,000,000 had it been able to obtain the supply as ordered in the period, and this point is not disputed by either party [¶*23*]. Accordingly, there was causal relationship between Blue's damage and Red's nonperformance of obligation. The damage was certain and foreseeable [*UNIDROIT 7.4.2~7.4.4*].

## II. Red shall pay prescribed royalties in connection with Platinum refining.

**<Summary of Blue's Submission regarding the second issue>**

This issue is about use of refining technology of Platinum between Blue and Red. Clause 3.2 of *Exhibit 7* (License Agreement) stipulates that Red shall pay royalty for using Blue's "Licensed Technology". The range of License Agreement provided in clause 1.1 was expanded to Platinum by conversation on November 2015 [¶*24*]. Red had used Blue's technology to refine Platinum since March 1st, 2016. Accordingly, Red shall pay prescribed royalties based on Clause 3.2 of the License Agreement.

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1. **License Agreement was revised orally to cover Platinum refining.**

Conversation and agreement to amend License Agreement was made between Ruby (Blue) and Orange (Red) on November 2015. Based on provision of *UNIDROIT 2.1.18*, oral revise precludes the invocation of License Agreement Article 7.10, which provides that the form of revision shall be *"in writing and signed by a duly authorised representative of each of the parties."* Therefore, Platinum was included in the subject of License Agreement.

**(1) Oral amendment of License Agreement**

In the conversation between Ruby and Orange on November 2015, Ruby states *"we can revise the license agreement to cover platinum refining as well"* [¶*24*], which is an offer to revise the License Agreement to include Platinum. As response, Orange confirmed the offer by *"Thank you. We would revise the license agreement"* [¶*24*]. Considering the remark by Orange on mail *"Thank you very much for your agreement to the amendment of the License Agreement"* [¶*24*], it was sufficient offer and acceptance by both parties to amend License Agreement to add Platinum [*UNIDROIT 2.1.1*].

**(2) Oral amendment of License Agreement precludes the invocation of Article 7.10 of License Agreement due to Blue's reasonable action.**

Blue had acknowledged that there was a conclusion of oral amendment of License Agreement to cover Platinum in November 2015. All the more, Blue had sent an email to confirm and verify the amendment progress, and made sure that the agreement in November was valid. [¶*24*] Therefore, when Blue found that Red is using Green's Platinum refining technology which was very similar to Blue's refining technology,

Blue investigates Green's technology in reliance on the conduct of License Agreement amendment to cover Platinum. Due to the investigation, Blue sent a letter [*Exhibit 12*]. It was reasonable conduct by Blue to investigate and request payment of royalties proportionate to the Platinum output in reliance of the oral amendment of the License Agreement.

The conduct by Blue meets the requirement of *UNIDROIT 2.1.18* provision. Therefore, oral amendment of License Agreement precludes the invocation of Article 7.10 of License Agreement.

**2. <u>Red was obliged to pay prescribed royalties to Blue because of using Blue's latest technology for Tungsten and other rare metals refining.</u>**

On *Exhibit 7 Article 3.2*, it provides that *"Licensee shall pay the Licensor… royalty equal to three percent of the Production Amount…. The "Production Amount" means the quantity produced by Licensee by using the Licensed Technology"*. The technology which Red the "*Licensee*" had used to refine Platinum was same as follows. Therefore, Red shall pay prescribed royalties to Blue.

**(1) Red had used Blue's Platinum refining technology.**

Red has claimed that they had made a License agreement [*Exhibit 13*] between Green Corporation (Green) and had used its' Platinum refining technology. However, the technology of Green overlaps to Blue's refining technology. Therefore, Red had used Blue's refining technology.

**(a) <u>Red's recognition</u>**

Red had recognized that Green's proposed technology was very similar to Blue's technology [¶*25*]. To judge the similarity of the technology, written or oral objective evidence of the detail and process of the refining technology shall be compared. Furthermore, the reason Red should consider the similarity is by comparing the extremely similar refining technology procedure and methods from the objective evidence. Therefore, Green and Blue's technology is highly similar.

**(b) <u>The Patent Office of Negoland's judgment is not a denial of similarity</u>**

The patent of the technology was approved for Green in Negoland [¶27]. However, Blue's rejection of the appeal was not based on the "*similarity of the technology of Blue"* [¶*27*]. The judgment was based on Blue's failure of evidence submission, that is to say the judgement did not consider the similarity of the technology. Therefore, this evidence shall not be used for the judgment of the independency of the technology.

**(c) <u>The "same technology" judgment in Arbitria and Meditria.</u>**

The Arbitration Center of Arbitria issued a judgement that Green's Platinum refining technology is the same [¶*27*]. In Meditria, the Patent Office of Meditria refused Green's technology patent application by the judgment that Green's technology was also the same as Blue's technology [¶*27*].

According to the two developing countries' public agency judgement in Arbitria [¶4] and Meditria [¶8], Green's technology and Blue's technology shall be considered as the same.

**(2) Red may claim to *"pursue domestic mitigation measures"* [*Paris Agreement Article 4.2*]**

Red may claim, that, the use of Green's technology within Negoland shall not be precluded in the grounds of the patent approved in the Patent Office of Negoland [¶*27*] on the bases of *Paris Agreement Article 4.2***.** Despite the fact the Green has a patent within Negoland, this issue is whether Red had used Blue's technology or not. It is because obtainment of patent does not matter but, whether the *"Licensed Technology"* was used or not based on License Agreement 3.2.

## FISHERIES CASE

**I. Blue seeks an arbitral award be rendered to dismiss Red's claim.**

**<Summary of Blue's Submissions regarding the first issue>**

This case is about the exposure of the information of Red, which is caused by a new virus that infected Blue's computer. The information ("Illegal Activities Information") reveals fishing activities which was approved by the Negoland's Ministry of Agriculture, Forestry and Fisheries which was acted by Negoland's fishing vessels, had a breach based on the Convention on Fish Stocks. Red claims the right to damages because the leak of such information was Blue's breach of its confidentiality obligation based on Confidentiality Agreement (*"Exhibit 20"*). However, the claim shall not be accepted because:

1. Illegal Activities Information shall not be included to "Confidential Information" defined in *Exhibit 20 SECTION 1*;
2. the leakage of Illegal Activities Information was not due to Blue's fault; and
3. A causal link between Blue's default and the damages is not sufficient.

Therefore, Blue is not obligated to pay US$10,000,000 in damages to Red due to a breach of the confidentiality obligation.

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**1. <u>The information that caused the damages shall NOT be Confidential Information</u>**

The damages arising from plummeting exports of marine products from Negoland in the period from April to December of 2016 is only because of the exposure of Illegal Activities Information. This information shall not be included to the DEFINITION [*Exhibit 20 SECTION 1(1)*], which is stipulated as "*'Confidential Information' shall mean (i)... (ii)...information which are disclosed by the Discloser, and are clearly labeled as "Confidential", or should be reasonably considered to be confidential given the nature of the information or the circumstances surrounding its disclosure."*

The information of the illegal activities (1) was not clearly labeled as "Confidential", and it can reasonably considered to be confidential neither (2) given the nature of the information nor (3) given the circumstances surrounding its disclosure.

**(1) The mark *"For Ministry Internal Use Only"* is different from the label of *"Confidential"***

It is impossible to substitute "Confidential" with other similar meaningful words because "Confidential" stated in the definition is obviously double

quoting, and thus, a mark is limited to the notation of "Confidential".

Although Some of the documents of the information are marked "For Ministry Internal Use Only" [¶*35*], they are not clearly marked as "Confidential". Therefore, the mark shall not apply to the DEFINITION.

**(2) It is not reasonable to say that the information has the nature to be confidential from the reasons below**

**(a)** <u>The loss of confidentiality by the nature of the information marked *"For Ministry Internal Use Only"*</u>

The aim of the mark "For Ministry Internal Use Only" which was in some of the documents of the information is to be kept within certain ministry. The information was originally controlled and marked by Negoland's Ministry of Agriculture, Forestry and Fisheries. After that, it was delivered to Red from the Ministry [¶*35*], and then given to company outside Negoland Blue from Red [¶*35*]. This situation is a departure from the aim of the mark. For the reason above, it is reasonable to say that its confidentiality by granting as "For Ministry Internal Use Only" had been already lost.

**(b)** <u>The necessity of being disclosed to the public based on the Convention</u>

*"The Convention on Fish Stocks stipulates that if any fishing activity in breach of...and disclose such illegal activity to the public"* [¶*35*]. Thus, Illegal Activities Information had the nature that it should be unveiled officially. In light of it, this information should not be considered to be confidence.

**(3) It shall not be reasonably considered to be confidence given the circumstances surrounding its disclosure from Red to Blue**

It was sent together with other confidential information by Red to Blue [¶*35*]. Even though other information which was given together with was confidential, Illegal Activities Information does not become confidential information directly as well.

**2. <u>The leakage of Illegal Activities Information is NOT due to Blue's fault</u>**

*Exhibit 20 SECTION 2(2)(ii)* stipulates *"the obligation set out in Section 2(1) shall not apply to the Confidential Information of the Discloser which is or becomes accessible to the public through no fault of the Recipient"*. In this case, the exposure of Illegal Activities Information was through no fault of the Recipient for the reasons below.

**(1) Blue used a reasonable degree of care**

*Exhibit 20 SECTION 2(1)(iv)* stipulates *"...it shall use the same degree of care, but no less than a reasonable degree of care, to avoid disclosure or*

*dissemination of the Confidential Information as the Recipient would use with respect to its own confidential information of similar importance."* as a duty of care that the recipient has.

Blue satisfied the requirements of this clause because Blue's;

a) standard programs to check virus-infected emails are installed in the system [¶*34*]; and
b) employees are frequently told to be careful with email attachments sent from strangers [¶*34*].
c) some other companies in Negoland and Arbitria were damaged by the same virus [¶*34*].

Therefore, Blue used the same degree of care, but no less than a reasonable degree of care, as the Recipient would use with respect to its own confidential information.

**(2) The action that an employee at Blue opened the email attachment shall not be fault.**

In this case, the exposure of Confidential Information of Red was because of a hacker but not Blue's default. In light of the facts that the email attachment sent from it was infected by a new type of virus which could pass through the virus-infected email check program, using the name of Blue's important customer and appeared very natural [¶*34*]. Also, other companies in Negoland and Arbitria were damaged by this virus [¶*34*]. In light of these facts, it was such normal to open a file in an email coming out very naturally, and could not verify as a fault of Blue's behalf.

In addition, inspite Blue took a reasonably degree of care, this virus was not able to be avoided under a considerable caution [¶34].

Accordingly, Red's claim Blue to pay US$10,000,000 in damages shall be dismissed.

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## II. Blue seeks an arbitral award be rendered to dismiss Red's claim.

**<Summary of Blue's Submissions regarding the second issue>**

Red and Blue entered into *Exhibit 17* agreement ('*Requirement Contract*') for Red to sell, and Blue to buy a certain amount of Super Red Mix for fifteen years. Red submitted hardship based on the fact that the production had been cut down in half while the cost of production had doubled [*Exhibit 21*]. However, this shall not be accepted because of the reasons stated below.

1. The parties are bound by the Requirement Contract;
2. There is no existence of hardship occurred by the event;
3. Should there be hardship, the Requirement Contract shall not be terminated; and
4. The Requirement Contract shall be amended as stated below.

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1. **<u>The parties are bound by the Requirement Contract.</u>**

A party must perform its obligation as long as it is possible, regardless of the burden

[*UNIDROIT 6.2.1 COMMENT*]. The Requirement Contract is a contract that defines Blue's obligation to buy, and Red's obligation to sell a certain amount of Super Red Mix. Red's burden has increased, from the rise in the cost, and decrease in their amount of production. Still, Red is capable of performing their obligation against Blue. Therefore, the parties are bound by the Requirement Contract.

2. **<u>The change of the equilibrium of the contract is not fundamental</u>**

The event does not meet the clauses in *UNIDROIT 6.2.2(a)-(d)*. In order to fulfill all clauses from (a)-(d), all three factors [*Exhibit 21①-③*] must individually fulfill them all. If even one factor does not meet a clause, the event will not be fundamental enough for hardship to occur. Therefore, hardship does not exist.

**(1) Red could have reasonably taken the event into account at the time of the conclusion of the contract**

**(a) <u>The decrease in the catch of Negoland fish [*Exhibit 21①*]</u>**

The change in the ocean current due to global warming lead to a fifty percent decrease in the catch of Negoland fish. Red could have taken this into account, since marine products including Negoland fish can be affected by the change of the nature. Global warming had already occurred at the time of the conclusion of the Requirement Contract. Red could have considered that the amount of Negoland fish it could catch may be affected by the change of the environment.

**(b) <u>The increase in the cost of imports due to the change in foreign exchange rates [*Exhibit 21②*]</u>**

Due to the change in foreign exchange rates, the cost of some imported ingredients used in Super Red Mix increased sharply. Red could have taken this fact into account, since the change in exchange rates frequently occur in international trading. In addition, considering the fact that some ingredients in Super Red Mix are imported, Red could have considered that the production cost and the price of the product is likely to change according to the exchange rates. In addition, in the conversation in ¶32, Wolf (Red) said "*Our recent study confirmed that there is plenty of supply of Negoland Fish*". This indicates that Red had conducted studies, and taken into account the catch of Negoland fish and the amount of production of Super Red Mix.

**(2) The risk of the event was assumed by Red [*UNIDROIT 6.2.2(d)*]**

**(a) <u>The decrease in the catch of Negoland fish [*Exhibit 21①*]</u>**

Red has agreed on Requirement Contract and set down the minimum and maximum quantity [*¶32, Exhibit 17*]. This shows the confirmation

of Red to guarantee a stable supply to Blue. In light of marine products can be effected by the nature, Red has clearly set down the numerical rate of supply for the next 15 years and agree to supply stably.

Furthermore, on the Wolf had commented *"our recent study confirmed that there is plenty of supply of Negoland Fish"* [¶*32*]. This comment is presuming the Red shall burden the risk to secure Negoland Fish. Because Blue cannot be involved in the production of Super Red Mix, and the assurance of securing Negoland Fish and to provide the product for 15 years is based on Red's investigation.

**(b) The increase in the cost of imports due to the change in foreign exchange rates [*Exhibit 21*②]**

The price of Super Red Mix is set by Red at the beginning of each calendar year [*Requirement Contract Section 3*]. In other words, the price can be changed based on any factor in consideration of production. All the more, in an international trade business exchange rates shall be one of the important factors to consider. Therefore, Red could have assumed the change in exchange rates and the risk of it as well.

From (1) - (2) stated above, the clauses of *UNIDROIT 6.2.2 (b)-(d)* are not satisfied. Therefore, there is no existence of hardship occurred by the event.

3. **Should there be hardship, the Requirement Contract shall not be terminated**

A contract shall be terminated only when it is reasonable to do so *[UNIDROIT 6.2.3(4)(a)]*. In this case, termination is not reasonable for either party. Considering that the price of Blue Salmon increased thanks to Super Red Mix, losing it will create a great damage to Blue, since Super Red Mix does not have any competing product. In addition, Red was able to secure profits by the Requirement Contract. Therefore, the Requirement Contract must not be terminated.

4. **The Requirement Contract shall be amended as stated below**

**(1) The discount of the price shall be 4%, and the minimum total quantity to be purchased shall continue to be 1,000 tons per calendar year**

Red is suggesting an amendment to end the 10% discount and to delete the provision regarding the minimum purchase. However, this shall not be accepted. The discount was included on condition of stable supply by establishing the minimum quantity of 1,000 tons [¶*32*]. In 2016, the total discount amount was 432,000 Nego-Lira. The amount of production and profit Red can gain has been cut in half. Thus, it is reasonable for Red's profit to be half as well. If the regular price will have been changed to 2.5 Nego-Lira, and the maximum quantity to 2,500 tons, the discount of 4% will make Red's profit

approximately half, which is 250,000 Nego-Lira. Therefore, the discount shall be decided considering the benefits of both parties, which leads to a 4% discount.

The minimum total quantity to be purchased shall be decided in relation to the discount. The 10% discount was introduced on condition that the minimum total quantity be included. The minimum total quantity to be purchased brings stable profit to Red, and a cheaper deal for Blue. Therefore, it is reasonable to continue the minimum quantity to be 1,000 tons, and change the discount to 4%.

**(2) The maximum total quantity to be supply shall be 2,500 tons per calendar year instead of 1,200 tons**

Red seeks an amendment to decrease the maximum total quantity of supply to 1,200 tons per calendar year. However, this shall not be accepted, since it would not rebalance the equilibrium of the Requirement Contract. Considering the fact that the production of Super Red Mix had been cut down by half [*Exhibit 21④ and ⑥*], Blue’s maximum total quantity to be purchased shall still be half the amount of the total production quantity. Furthermore, regarding that Super Red Mix is a producer goods, decreasing the amount down to 1,200 tons, half of Blue's last year's order, does not only affect the current farming of Blue Salmon, but also the future and cause an excessive damage to Blue instead.

Therefore, it is reasonable to amend the maximum total quantity to 2,500 tons, to fix the equilibrium between Red and Blue.

**(3) Introduce a clause to renew the agreement every year**

It is reasonable to change the limitation of the quantity according to the amount Red can produce. The situation surrounding the production of Super Red Mix may change. Therefore, the maximum and minimum quantity of Super Red Mix Blue can purchase a year shall be amended accordingly.

[END]