

**Corn Products International, Inc.**

v.

**United Mexican States  
(ICSID Case No. ARB(AF)/04/1)**

**Minutes of the First Session of the Tribunal  
London, UK, September 16, 2004**

As agreed by the parties, the first session of the Arbitral Tribunal was held on September 16, 2004 from 2 p.m. to 5.10 p.m. in London, UK.

Present at the session were:

Members of the Tribunal

Prof. Christopher J. Greenwood, CMG, QC, President  
Prof. Andreas F. Lowenfeld, Arbitrator  
Licenciado Jesús Serrano de la Vega, Arbitrator

ICSID Secretariat

Mr. Gonzalo Flores, Secretary of the Tribunal

Representing Corn Products International, Inc. (Claimant)

Ms. Lucinda A. Low (Miller & Chevalier Chartered, Washington, D.C.)  
Mr. Robert E. Herzstein (Miller & Chevalier Chartered, Washington, D.C.)  
Mr. Joseph Whitlock (Miller & Chevalier Chartered, Washington, D.C.)

Representing the United Mexican States (Respondent)

Mr. Hugo Perezcano Díaz (Secretaría de Economía, Mexico D.F.)  
Mr. Luis María Barrera (Secretaría de Economía, Mexico D.F.)  
Mr. J. Christopher Thomas (Thomas & Partners, Vancouver, Canada)  
Mr. Steve E. Becker (Shaw Pittman LLP, Washington, D.C.)

1. The President of the Tribunal opened the session, welcomed the participants and referred to the agenda circulated by the Secretary (a copy of which is attached as annex 1 to these minutes).
2. The President drew the parties' attention to (a) Mexico's letter to the Secretary-General of ICSID, dated September 8, 2004, requesting the establishment of a consolidation tribunal under Article 1126 of the North American Free Trade Agreement ("NAFTA") to consider the consolidation of the present case with one filed by Archer Daniels Midland Co., and A.E. Staley Manufacturing Co., against Mexico ("the ADM/Staley case") and (b) a letter of the same date to the Tribunal requesting the suspension of the present proceedings pending a decision of the consolidation tribunal. Counsel for the Claimant made clear that the Claimant opposed that request. It was therefore decided that the Tribunal would first consider items 1 to 13 of the



matters listed on the Agenda and would then hear the parties' submissions on Mexico's request for suspension. The remaining items on the Agenda would be considered in the light of the Tribunal's ruling on that request.

1. Constitution of the Tribunal and the Tribunal Members' Declarations

3. The President noted that the Tribunal had originally been constituted on April 28, 2004 and reconstituted on July 13, 2004 in accordance with the Additional Facility Arbitration Rules, following the resignation of Licenciado Manuel Tron and the appointment of Licenciado Jesús Serrano de la Vega. The President also noted that the Claimant had supplied correspondence agreeing to the appointment of each individual member of the Tribunal in accordance with NAFTA Article 1125. The parties confirmed their agreement that the Tribunal had been properly constituted. Copies of the declarations signed by the three arbitrators pursuant to Article 13 of the Additional Facility Arbitration Rules were distributed by the Secretariat prior to the first session.

2. Representation of the Parties

4. It was noted that the Claimant would be represented by:

Ms. Lucinda A. Low and Messrs. Robert E. Herzstein, Myles S. Getlan and Joseph Whitlock  
Miller & Chevalier Chartered  
655 Fifteenth Street, N.W. Suite 900  
Washington, D.C. 20008-5701  
Phone: (202) 626-5800  
Fax: (209) 628-0858  
Email: llow@milchev.com

5. It was noted that the Respondent would be represented by:

Lic. Hugo Perezcano Díaz  
Director General de Consultoría Jurídica de Negociaciones  
Dirección General de Consultoría Jurídica de Negociaciones  
Subsecretaría de Negociaciones Comerciales Internacionales  
Secretaría de Economía  
Alfonso Reyes #30, Piso 17  
Colonia Condesa  
C.P. 06140  
México, DF  
Phone: (52-55) 5729-9134  
Fax: (52-55) 5729-9310  
Email: hperezca@economia.gob.mx

6. Lic. Perezcano indicated that the Respondent would also be represented by Mr. Steve E. Becker from the Washington, D.C. based law firm of Shaw Pittman LLP and Mr. J. Christopher Thomas from Thomas & Partners in Vancouver, and that he would inform the Tribunal of the

names of any further person who might be empowered to represent the United Mexican States in this proceedings.

7. At Lic. Perezcano's request, it was decided that all future electronic communications to the United Mexican States would also be addressed to Lic. Luis Marín Barrera from Mexico's Secretaría de Economía at [lmarin@economia.gob.mx](mailto:lmarin@economia.gob.mx).

3. Applicable Arbitration Rules

8. It was noted that, pursuant to NAFTA Article 1120, the proceedings would be conducted in accordance with the Additional Facility Arbitration Rules, as modified by the provisions of Chapter 11, Section B, of the NAFTA.

4. Fees and Expenses of Tribunal Members

9. It was confirmed that, in addition to receiving reimbursement for any direct expenses reasonably incurred, each member of the Tribunal would, in accordance with the Centre's Schedule of Fees and the Memorandum on the Fees and Expenses of ICSID Arbitrators, receive:

(i) a fee of US\$2,400 (two thousand four hundred United States dollars), or such other fee as may be set forth from time to time in the Centre's Schedule of fees, for each day of participation in meetings of the Tribunal, or eight hours of other work performed in connection with the proceedings or pro rata; and

(ii) subsistence allowances and reimbursement of travel and other expenses within limits set forth in Rule 14 of the ICSID Administrative and Financial Regulations.

5. Advance Payments to the Centre

10. It was recalled that the Centre had, on August 9, 2004, requested each party to pay an amount of US\$60,000 (sixty thousand United States dollars) to defray the costs of the proceeding during its first three to six months. The Tribunal noted that the Claimant had deposited its advance payment of US\$60,000 and that the Respondent had taken the appropriate measures to make such payment.

6. Apportionment of Costs

11. It was agreed that, in accordance with Articles 28(1)(f) and 58 of the Additional Facility Arbitration Rules and ICSID's Administrative and Financial Regulation 14, the parties would defray the expenses of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to costs.

7. Records of Hearings

12. It was agreed that complete sound recordings would be made of this and of subsequent sessions, copies of which would be sent to the parties and to the arbitrators. It was also agreed that the Secretary would prepare summary minutes of this first session and that stenographic transcripts would be used in future hearings.

13. It was also agreed that, in principle, the English version of these transcripts would be made by stenographers present at the place of the hearing and that the Spanish version of the transcripts would be made later by stenographers from the audio recordings made during the respective hearing. Mexico reserved its right, nonetheless, to request the presence of court reporters during the hearings to prepare a Spanish version of the transcripts.

#### 8-9. Means of Communication and Copies of Instruments

14. It was agreed that written instruments in these proceedings would be submitted to the Centre in an original and five copies, except that brief communications that were not substantive applications or submissions could be transmitted by fax. The parties also agree to file additional electronic copies of their submissions in MS Word format and, where possible, of accompanying documentation, in PDF or MS Word format. These electronic copies would be sent to the Secretary of the Tribunal, who would arrange for their appropriate distribution. In addition, the Tribunal urged the parties to deliver electronic copies via email to one another.

15. It was noted that, unless otherwise provided for in the Arbitration Rules, the decisions of the Tribunal would be communicated to the parties through instructions to the Secretariat.

#### 10. Quorum

16. It was agreed that the quorum for sittings of the Tribunal would be constituted by all three of its members. It was also agreed that, in the case of hearings, each of them should be physically present.

17. It was agreed that the Tribunal could take decisions by correspondence among its members, or by any other appropriate means of communication, provided that all members were consulted. The decisions of the Tribunal would be taken by the majority of its members.

18. The members of the Tribunal and the parties agreed that the President should have the power to determine procedural matters.

#### 11. Procedural Languages

19. It was agreed that the languages of the proceedings would be English and Spanish. The Claimant would file its submissions in English and the Respondent would file its submissions in Spanish. The Tribunal decided that each party should also provide a translation of its submissions into the other official language within two weeks from the date of submission of each set of submissions. Translations of accompanying documents would be required only if requested by the Tribunal or the other party. It was noted that, in case of discrepancy between an original and a translation, the original text of any submission or document would prevail.

20. It was also agreed that the Tribunal would render its decisions in both languages. The communications from the Secretariat to the parties would be made in either language. It was confirmed that the Secretariat would arrange simultaneous interpretation for all hearings.

21. Finally, the Respondent agreed that, in case of matters requiring an immediate decision

from the President of the Tribunal, any communication would be in English.

#### 12. Place of Arbitration

22. The President noted that the parties had agreed that the place of arbitration would be the City of Toronto in Ontario, Canada. Accordingly, and pursuant to Articles 19 and 20 of the Additional Facility Arbitration Rules and Article 1130 of the NAFTA, the Tribunal decided that the place of arbitration would be Toronto but that hearings might be arranged for other locations such as the World Bank offices in Washington DC and that the Tribunal was free to hold its deliberations wherever the members found most convenient.

23. The parties agreed that the members of the Tribunal might agree the text of the award by correspondence or other means of communication and sign the final text without meeting. They also agreed that wherever the award was signed it was deemed to have been made in Toronto.

#### 13. Delegation of Power to Fix Time Limits

24. It was agreed that the President of the Tribunal would have the power to fix and extend time limits for the completion of the various steps in the proceeding.

#### 14-15. Request for Suspension of the Proceedings and Pleadings Schedule

25. The Tribunal heard submissions from counsel for both parties regarding Mexico's request for suspension of the proceedings. For the reasons given in Procedural Order No. 2, the Tribunal decided not to suspend the proceedings.

26. The Tribunal decided, with the agreement of the parties and in accordance with Additional Facility Arbitration Rules Article 36, that the proceedings should consist of a written phase and an oral phase.

27. At the request of Mexico and with the agreement of the Claimant, the Tribunal decided that the written proceedings should initially be addressed to the question of responsibility, with the issue of damages deferred until after the Tribunal rendered an award on responsibility.

28. After hearing the parties' counsel, the Tribunal decided that:-

- (a) the Claimant should file its Memorial no later than 15 February 2005;
- (b) the Respondent should file its Counter-Memorial no later than 15 July 2005;
- (c) the Claimant should file its Reply no later than 26 August 2005;
- (d) the Respondent should file its Rejoinder no later than 7 October 2005.

39. The Tribunal decided to defer determination of the dates of the oral hearings.

#### 16. Production of Evidence

30. It was agreed that the parties would include in their memorial and counter-memorial, respectively, the expert witnesses' reports, witnesses' statements and all other evidence they planned to rely upon. The Parties would also be allowed to include in their reply and rejoinder,

respectively, additional witness' statements, expert reports or other evidence, but only in response to the matters raised by the other party's next previous written submission.

31. If a party wished to produce evidence at any time other than in accordance with the decision minuted in paragraph 30, above, it would be required to obtain the leave of the Tribunal.

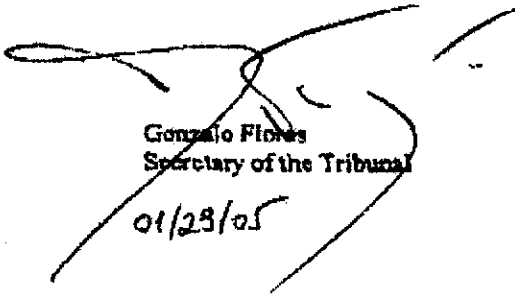
32. It was agreed that the parties would present copies of documents and that, if one of the parties challenged the copy of a document or the Tribunal doubted the authenticity of a copy, the Tribunal would require production of the original, or a certified copy of the original.

33. Both parties reserved their rights to seek production of documents at a further stage of the proceedings. The parties agreed to use International Bar Association Rules on Taking of Evidence as guidance in this regard.

34. It was finally agreed that each party would number the accompanying documentation consecutively throughout the whole proceedings. Thus, documents submitted by the Claimant would be numbered C1, C2, C3 and so on. The Respondent would use the format R1, R2, R3 and so forth. The parties also agreed to number the paragraphs and pages of each of their written submissions.

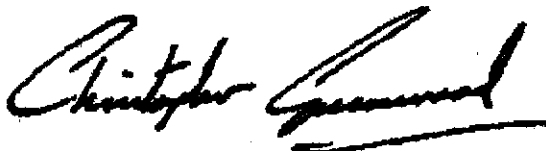
17. Other Business

35. There being no further business, the President adjourned the meeting at 5.10 p.m. Sound recordings were made of the session and deposited in the archives of the Centre.



Gonzalo Flores  
Secretary of the Tribunal

01/28/05



Christopher J. Greenwood, CMG, QC  
President of the Tribunal

14 JANUARY 2005

## Annex No.1

**Corn Products International, Inc.**

c.

**Estados Unidos Mexicanos  
(Caso CIADI No ARB(AF)/04/1)****Agenda Provisional  
Primera sesión del Tribunal****I. Asuntos Procesales**

El Reglamento de Arbitraje referido más abajo es el contenido en el Anexo C del Mecanismo Complementario del Centro. TLCAN significa Tratado de Libre Comercio de América del Norte.

1. Constitución del Tribunal y declaraciones de sus miembros (Artículo 13 del Reglamento de Arbitraje; Artículos 1123 y 1125 del TLCAN).
2. Representación de las partes (Artículo 26 del Reglamento de Arbitraje).
3. Reglas de Arbitraje a aplicarse (Artículos 1, 28(2) y 35 del Reglamento de Arbitraje; Artículo 1120(2) del TLCAN).
4. Honorarios y gastos de los miembros del Tribunal (Artículo 5 del Mecanismo Complementario; Regla 14 del Reglamento Administrativo y Financiero del Centro; Arancel de Derechos, Honorarios y Cargos del Centro).
5. Pagos anticipados al Centro (Artículo 5 del Mecanismo Complementario; Regla 14 del Reglamento Administrativo y Financiero del Centro).
6. Prorrato de las costas del procedimiento (Artículo 5 del Mecanismo Complementario; Regla 14 del Reglamento Administrativo y Financiero del Centro; Artículos 28(1)(f) y 58 del Reglamento de Arbitraje).
7. Actas de las audiencias (Artículo 28(1)(g) del Reglamento de Arbitraje).
8. Medios de comunicación (Artículo 5 del Mecanismo Complementario; Regla 24 del Reglamento Administrativo y Financiero del Centro; Artículo 1128 del TLCAN).
9. Copias de documentos (Artículo 31 y 28(1)(d) del Reglamento de Arbitraje).
10. Quórum (Artículo 22(2) y 28(1)(a) del Reglamento de Arbitraje).
11. Idiomas del procedimiento (Artículo 30 y 28(1)(b) del Reglamento de Arbitraje).
12. Lugar del procedimiento (Artículos 19 y 20 del Reglamento de Arbitraje; Artículo 1130 del TLCAN).

**Annex No.1**

13. Delegación de la facultad para fijar plazos (Artículo 33 del Reglamento de Arbitraje).
14. Etapa escrita y oral del procedimiento (Artículos 36 y 28(1)(e) del Reglamento de Arbitraje).
15. Actuaciones escritas: número, secuencia y plazos (Artículos 38y 28(1)(c) del Reglamento de Arbitraje).
16. Fechas de las sesiones siguientes (Artículo 21(2) del Reglamento de Arbitraje).

**II. Otros Asuntos**

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