INTERNATIONAL CENTRE FOR
SETTLEMENT OF INVESTMENT DISPUTES

ADDITIONAL FACILITY

REQUEST FOR INSTITUTION OF ARBITRATION PROCEEDINGS

SUBMITTED PURSUANT TO CHAPTER 11 OF THE NORTH AMERICAN FREE TRADE AGREEMENT

ARCHER DANIELS MIDLAND COMPANY

and

A. E. STALEY MANUFACTURING COMPANY

Claimants,

v.

UNITED MEXICAN STATES,

Respondent.

Submitted in accordance with Chapter II of the ICSID Arbitration (Additional Facility) Rules and delivered by hand on August 4, 2004, to the International Centre for Settlement of Investment Disputes, Secretariat, 1818 H Street, N.W., Washington, D.C. 20433.

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I. PROCEDURAL REQUIREMENTS

A. Request for the Institution of Arbitration Proceedings

1. Pursuant to Article 2 of the Arbitration (Additional Facility) Rules of the International Centre for Settlement of Investment Disputes ("AF Arbitration Rules"), and Articles 1116, 1117, 1120(1)(b), and 1137 of the North American Free Trade Agreement ("NAFTA"), Archer Daniels Midland Company ("ADM") and A. E. Staley Manufacturing Company ("Staley") (collectively, "Claimants") hereby request the institution of arbitration proceedings on their own behalf and on behalf of their enterprise, Almidones Mexicanos, S.A. de C.V. ("ALMEX"), a Mexican company that they jointly own and control.

2. ADM and Staley submit to arbitration their claim that the Mexican Government has breached obligations owed to Claimants under Section A of Chapter 11 of the NAFTA. These breaches have arisen from Mexico's imposition since January 1, 2002, of a tax on soft drinks and certain other non-alcoholic beverages, syrups, and concentrates containing high fructose corn syrup ("HFCS") that Mexico does not impose if these products are sweetened only with cane sugar. This tax (the "HFCS tax") has eliminated the most significant market for ALMEX's HFCS business and has destroyed the value of the very substantial investments that ADM and Staley made, including those investments made in and through ALMEX in HFCS production and distribution facilities in Mexico, in order to sell HFCS to the Mexican industry producing such beverages, syrups, and concentrates. The Mexican Government's purpose in enacting the HFCS tax was to benefit the Mexican-owned cane sugar industry at the expense of the foreign-owned HFCS industry.

B. Parties to the Dispute

3. Pursuant to Article 3(1)(a) of the AF Arbitration Rules, each party to the dispute is identified below.

1. Claimants

4. ADM is incorporated under the laws of the State of Delaware[1] and is headquartered in Decatur, Illinois. ADM's shares are publicly traded on the New York Stock Exchange. Its principal place of business is at the following address:

Archer Daniels Midland Company
4666 Faries Parkway
Decatur, Illinois 62525

As required by Article 3(1)(e) of the AF Arbitration Rules, ADM has duly authorized the filing of this claim in accordance with its relevant internal procedures.[2]

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[1] *See* Exhibit 1 for Certificate of Incorporation of ADM from the State of Delaware.

[2] *See* Exhibit 2 for ADM's authorization of the filing of this claim.

5. Staley is incorporated under the laws of the State of Delaware[3] and is headquartered in Decatur, Illinois. Its principal place of business is at the following address:

A. E. Staley Manufacturing Company
2200 E. Eldorado Street
Decatur, Illinois 62525

As required by Article 3(1)(e) of the AF Arbitration Rules, Staley has duly authorized the filing of this claim in accordance with its relevant internal procedures.[4]

2. Enterprise of the Claimants

6. The Claimants submit this claim to arbitration on their own behalf and on behalf of their joint investment, ALMEX. ALMEX is a company organized under the laws of Mexico and incorporated in the State of Jalisco. Its principal place of business is at the following address:

Almidones Mexicanos, S.A. de C.V.
Calle 26 # 2756 Zona Industrial
C.P. 44940 Guadalajara, Jalisco
Mexico

7. ALMEX is an enterprise[5] that is a joint venture owned and controlled by ADM and Staley. ADM, through a wholly owned Mexican subsidiary called ADM Controladora, S.A. de C.V., and Staley, through direct ownership, each own 50 percent of the shares of ALMEX.[6] For this reason, Claimants may submit a claim under NAFTA Article 1117 on behalf of ALMEX, as well as on their own behalf under NAFTA Article 1116. ALMEX has duly authorized the filing of this claim in accordance with its relevant internal procedures.[7]

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[3] *See* Exhibit 3 for Certificate of Incorporation of Staley from the State of Delaware.

[4] *See* Exhibit 4 for Staley's authorization of the filing of this claim.

[5] NAFTA Article 1139 defines "enterprise" by reference to NAFTA Article 201, which defines "enterprise" as "any entity constituted or organized under applicable law, whether or not for profit, . . . including any corporation . . . joint venture or other association."

[6] *See* paragraph 22 below for the details regarding the Claimants' ownership of ALMEX. *See also* Exhibit 5 for a Certificate of Incorporation for ALMEX.

[7] *See* Exhibit 6 for ALMEX's authorization of the filing of this claim.

3. Respondent

8. The Government of Mexico, the Respondent in these proceedings, is a sovereign State and a Party to the NAFTA. For purposes of disputes arising under the NAFTA, the Government of Mexico's address is the following:

Secretaría de Economía
Dirección General de Inversión Extranjera
Av. Insurgentes Sur No. 1940, piso 8,
Col. Florida, Del. Álvaro Obregón
C.P. 01030, México, D.F.

C. Notice and Time Requirements

9. NAFTA Article 1119 requires that a claimant notify a Party at least 90 days before submitting its arbitration claim. Claimants fulfilled this requirement by delivering their Notice of Intent to Submit a Claim to Arbitration to the Mexican Government on October 14, 2003, more than 90 days before the date of submission of this Request for Institution of Arbitration Proceedings. Exhibit 7 contains a copy of this Notice and the date-stamped cover letter confirming receipt by Respondent. Claimants voluntarily provided additional information concerning their claim at the request of the Mexican Government on November 4, 2003.[8]

10. NAFTA Article 1120 states that a claim may be submitted to arbitration no sooner than six months following the events giving rise to it. ADM's and Staley's claim arises from the HFCS tax – a discriminatory excise tax on soft drinks containing HFCS – imposed by Mexico, effective January 1, 2002. Accordingly, Claimants have satisfied the requirement of NAFTA Article 1120.

11. NAFTA Articles 1116 and 1117 require that claims be submitted to arbitration within three years of "the date on which the investor first acquired, or should have first acquired" knowledge of the breach and knowledge that the investor or enterprise had incurred loss or damage. Mexico instituted the HFCS tax on January 1, 2002, and Claimants and their enterprise first acquired knowledge of the NAFTA breaches and potential losses or damages on or shortly after that date. Therefore, Claimants have timely submitted their arbitration claim within the applicable three-year period in satisfaction of NAFTA Articles 1116 and 1117.

D. Referral of Expropriation Claim to Competent Authorities

12. NAFTA Article 2103(6) requires that an investor seeking to submit a claim of expropriation under NAFTA Article 1110 arising from a taxation measure must refer the issue of whether the measure is not an expropriation to the appropriate "competent authority" at the

[8] *See* Exhibit 8 for a copy of this submission, including the cover letter, completed form "Notice of Intent to Submit a Claim to Arbitration Under NAFTA Chapter 11," evidence of ADM and Staley's ownership and control of ALMEX, letter authorizing Warren E. Connelly to represent ADM, letter authorizing Daniel M. Price to represent Staley, and power of attorney authorizing Warren E. Connelly and Daniel M. Price to represent ALMEX (Spanish translations of English documents have been omitted for conciseness).

time the investor submits its Notice of Intent to Submit a Claim to Arbitration under Article 1119. The "competent authority," as identified in Annex 2103.6, must then consider whether or not the taxation measure constitutes an expropriation and, "[i]f the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of such referral, the investor may submit its claim to arbitration under Article 1120."

13. Under NAFTA Annex 2103.6, the competent authority in the case of a United States investor is the Assistant Secretary of the Treasury (Tax Policy), Department of the Treasury. Claimants provided a copy of their Notice of Intent to the competent authority in the United States on October 14, 2003.[9] Claimants also provided a copy on November 25, 2003, to the competent authority in Mexico, who is the Deputy Minister of Revenue of the Ministry of Finance and Public Credit.[10] Claimants did not receive a written response from either competent authority. Six months have elapsed since October 14, 2003, and the competent authorities have not achieved the agreement referred to in Article 2103(6). Claimants are, therefore, free to submit their claim to arbitration under Article 1120.

14. Moreover, on November 21, 2003, the United States competent authority informed Claimants that it did not agree that the HFCS tax was not an expropriation, and thus, the competent authorities had failed to agree that the measure was not an expropriation.[11] By operation of Article 2103, the effect of this determination is that Claimants' claim may be submitted to arbitration.

E. Consultations and Negotiations Under NAFTA Article 1118

15. NAFTA Article 1118 states that, before initiating arbitration proceedings, the disputing parties should first attempt to settle a claim through consultation or negotiation. Since the date on which the Mexican Government first imposed the HFCS tax, ALMEX and Claimants have sought the removal of the tax through letters and meetings with Mexican Government officials, and through efforts by the Corn Refiners Association, which is Claimants' trade association. These efforts are further detailed below.[12] These negotiations have failed to achieve permanent removal of the HFCS tax or otherwise settle the claims detailed herein.

F. Consents and Waivers

16. Article 3(1)(b) of the AF Arbitration Rules requires that a request for institution of arbitration proceedings "set forth the relevant provisions embodying the agreement of the parties to refer the dispute to arbitration."

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[9] *See* Exhibit 9 for a copy of the cover letter of this submission. The Notice of Intent, which was attached to this cover letter, is provided in Exhibit 7.

[10] *See* Exhibit 10 for a copy of the cover letter of this submission. The Notice of Intent, which was attached to this cover letter, is provided in Exhibit 7.

[11] Oral communication from Pamela Olson, Assistant Secretary of the Treasury (Tax Policy), Department of the Treasury, to counsel for Claimants.

[12] *See* discussion below at paragraph 64.

17. Claimants invoke Section B of Chapter 11 of the NAFTA, specifically Articles 1116, 1117, 1120, and 1122, as providing the basis for this arbitration proceeding. These provisions concern the settlement of disputes between a Party and an investor of another Party.

18. NAFTA Article 1122(1) provides that each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in the NAFTA. In addition, Article 1122(2) provides that a Party's consent under Article 1122(1) and the submission by a disputing investor of a claim to arbitration shall constitute written consent of the parties to arbitration for the purposes of the ICSID Additional Facility Rules.

19. NAFTA Article 1121 requires a consent and waiver by any claimant as conditions precedent to submission of a claim to arbitration. ADM, Staley, and ALMEX hereby consent to arbitration according to the procedures set forth in NAFTA Chapter 11 and waive their right to initiate or continue other proceedings that seek damages based on measures contested herein, pursuant to the requirements of NAFTA Article 1121. As required by Article 1121(3), ADM, Staley, and ALMEX provide copies of their written consents and waivers as Exhibit 11.

G. Eligibility of Investors to Bring a Claim on Their Own Behalf and on Behalf of Their Investment

20. ADM and Staley are eligible to contest the HFCS tax, the measure in dispute, on their own behalf and on behalf of their investment, ALMEX, pursuant to NAFTA Articles 1116 and 1117, respectively.

21. NAFTA Article 1116 permits an "investor of a Party" to submit a claim on its own behalf if it has incurred "loss or damage by reason of, or arising out of," a breach of an obligation under Section A of NAFTA Chapter 11. The term "investor of a Party," as defined in NAFTA Article 1139, includes "an enterprise of such Party, that seeks to make, is making or has made an investment." As noted above, NAFTA defines an enterprise as "any entity constituted or organized under applicable law, whether or not for profit, . . . including any corporation . . . joint venture or other association." ADM and Staley are each enterprises incorporated in the State of Delaware. Both ADM and Staley have made very substantial investments in Mexico. ADM and Staley have each suffered damages arising out of the HFCS tax, which breaches NAFTA Articles 1102, 1106, and 1110. Thus, ADM and Staley each satisfy the requirements to file a claim under NAFTA Article 1116.

22. NAFTA Article 1117 permits an "investor of a Party," such as ADM and Staley, to file a claim "on behalf of an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly" if the "enterprise has incurred loss or damage by reason of, or arising out of, that breach." ALMEX, which is incorporated in Mexico, is an "enterprise of another Party." ALMEX is owned and controlled jointly by Claimants. ADM owns 100 percent of the shares of ADM Controladora, S.A. de C.V., a corporation incorporated in Mexico, and ADM Controladora, S.A. de C.V., owns 50 percent of the shares of ALMEX.[13]

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[13] *See* Exhibit 8 for evidence of ADM and Staley's ownership and control of ALMEX. ADM's investment in ALMEX also includes cash transfers booked as equity.

Staley directly owns 50 percent of the shares of ALMEX. The Claimants are, therefore, entitled to submit this claim to arbitration on behalf of ALMEX.

23. As required by NAFTA Article 1101, the breaches of Chapter 11 described below arise from measures adopted or maintained by a Party relating to investors of another Party and investments of an investor of another Party in the territory of the Party. Article 1139 defines "investment" as including, but not limited to, an enterprise. Thus, ALMEX is an "investment." Furthermore, ALMEX is "an investment of an investor of another Party," defined by NAFTA Article 1139 as "an investment owned or controlled directly or indirectly by an investor of such Party." Article 201 of NAFTA defines "measure" as "any law, regulation, procedure, requirement or practice." The HFCS tax is a "measure" of Mexico, because it consists of certain provisions of the *Impuesto Especial sobre Producción y Servicios* of the Government of Mexico ("IEPS," or "Special Tax on Production and Services"), together with implementing regulations of the relevant Mexican authorities. Finally, the HFCS tax is a measure that "relates to" Claimants and their investment, ALMEX. The tax directly impairs the ability of ALMEX to sell HFCS produced and/or distributed by ALMEX in Mexico to Mexican producers of beverages and syrups and concentrates for beverages. The Mexican Government's expressly declared intent to help the Mexican-owned sugar industry by harming the U.S.-owned HFCS industry further demonstrates that the HFCS tax is a measure that "relates to" ALMEX in the sense of Article 1101. The breaches of NAFTA Articles 1102, 1106, and 1110 have given rise to continuing losses and damage to ALMEX and Claimants.

H. Approval by the Secretary-General Pursuant to Article 4 of the ICSID Arbitration (Additional Facility) Rules

24. As discussed in paragraphs 16-19 above, Mexico has consented in writing to submit investment disputes with U.S. companies for settlement by binding international arbitration to the Additional Facility, and Claimants hereby consent to such arbitration. Claimants further consent to the jurisdiction of the Centre under Article 25 of the Convention in the event that the jurisdictional requirements *ratione personae* of that Article are met at the time when proceedings are instituted.

25. The Secretariat of the Centre is authorized to administer these arbitration proceedings under the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes ("Additional Facility Rules"). Article 2(a) of the Additional Facility Rules authorizes the Secretariat of the Centre to administer proceedings between a State and a national of another State if the proceedings are "conciliation and arbitration proceedings for the settlement of legal disputes arising directly out of an investment which are not within the jurisdiction of the Centre because either the State party to the dispute or the State whose national is a party to the dispute is not a Contracting State [to the ICSID Convention]."

26. In this case, the dispute arises "directly out of an investment" and is between a State, Mexico, and "a national of another State." Under Article 1(6) of the Additional Facility Rules, a "[n]ational of another State" is "a person who is not . . . a national of the State party to that proceeding." Claimants, as U.S. companies, are not nationals of Mexico. The dispute is not

within the jurisdiction of the Centre because the State party to the dispute, Mexico, is not a Contracting State to the ICSID Convention.

27. Claimants respectfully request the Secretary-General of ICSID to approve access to the Additional Facility in respect of this dispute under Article 4 of the Additional Facility Rules. The "agreement providing for . . . arbitration proceedings under the Additional Facility in respect of" this dispute, under Article 4 of the Additional Facility Rules, is formed by Respondent's consent to submit disputes with U.S. companies for settlement by binding arbitration to the Additional Facility pursuant to Article 1122 of the NAFTA, and Claimants' consent to submit this dispute to the Additional Facility expressed in this Request and the attached consents and waivers. Claimants understand that the date of the Secretary-General's approval of access to the Additional Facility will be the date of registration of this Request.

I. Agreement Concerning the Number of Arbitrators

28. Article 3(2) of the AF Arbitration Rules states that the request for institution of arbitration may include any provision agreed to regarding the number of arbitrators and their method of appointment.

29. NAFTA Article 1123 states that, "unless the disputing parties otherwise agree, the Tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties." Claimants and Mexico have not otherwise agreed to the number and appointment of arbitrators. Therefore, NAFTA Article 1123 shall govern.

II. FACTUAL BACKGROUND

30. As required by Article 3(d) of the AF Arbitration Rules, Claimants set out below the factual background of this dispute, the breaches of Chapter 11 of the NAFTA to be proved during the proceedings, the issues presented by these claims, and an indication of the amount at issue.

A. Introduction

31. This dispute arises from the Mexican Government's imposition of the HFCS tax, effective on January 1, 2002, and continuing to date. As explained in detail below, this measure violates the requirements of NAFTA Article 1102 (National Treatment), 1106 (Performance Requirements), and 1110 (Expropriation), and has damaged Claimants and their investment. Mexico's HFCS tax is a blatantly discriminatory device whose sole purpose was to protect the Mexican cane sugar industry against substantial inroads made by Claimants in the Mexican sweetener market. The tax has had its intended effect because it caused ALMEX to substantially cease the manufacture and sale of HFCS and to stop importing and distributing HFCS that ADM and Staley produced in the United States for use by Mexican soft drink bottlers.

32. Every year, Mexican consumers drink over 15 billion liters of soft drinks, or about 150 liters per capita, and the soft drink market has been growing every year.[14] Consumption of soft drinks has created a market of great potential for the sweetener industry. Claimants invested in Mexico, relying on the guarantees of NAFTA and other Mexican Government representations that they could compete in the Mexican market on a nondiscriminatory basis. However, the HFCS tax has deprived Claimants of their ability to participate in this market or benefit from its growth.

B. HFCS Has Revolutionized the Sweetener Market

33. HFCS is a liquid sweetener with virtually the same chemical characteristics as sugar. HFCS has transformed the sweetener markets of the United States and Canada since the late 1970s. The same transformation was under way in Mexico when the Mexican Government intervened to protect the Mexican sugar industry.

34. HFCS contains a relatively large proportion of fructose, which is the sweetest of all natural sugars. Corn refiners, including ADM, Staley, and ALMEX, produce HFCS by subjecting corn to a sophisticated, capital-intensive, multi-stage production process. The process begins with corn, which is first milled to produce slurry starch and then refined to produce dextrose. Dextrose is further processed to produce two types of HFCS – HFCS-42 and HFCS-90.[15] HFCS-42 and HFCS-90 are blended to produce HFCS-55. The production process requires not only basic corn wet milling technology, but also specialized machinery and equipment, as well as expensive enzymes and chemicals. The capital investment required for HFCS-55 production typically runs into the hundreds of millions of dollars.

35. Approximately 90 percent of HFCS-55 is used in the beverage industry. HFCS-55 is a very close substitute for sugar, having similar physical characteristics, functional properties, caloric and nutritional properties, sweetening power, and flavor. The technology to produce HFCS-55 on a commercial scale did not become available until the 1970s. Prior to its introduction, sugar had served as the only source of sweetener for non-dietetic soft drinks. Once introduced, HFCS-55 quickly became a cost competitive substitute for sugar in soft drinks, which it rapidly replaced in the United States. Between 1977 and 1982, HFCS-55 sales grew from 15,000 short tons to over 1.5 million short tons. By the late 1980s, U.S. soft drink manufacturers relied almost exclusively on HFCS-55. The same near-complete replacement of sugar took place shortly thereafter in the Canadian market.

36. The phenomenal growth of HFCS consumption in soft drinks is due to several competitive advantages over sugar. First, HFCS, while almost completely interchangeable

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[14] *See* Exhibit 12, excerpts from "The Fruit Juice and Soft Drink Market in Mexico," the Market Research Centre and the Canadian Trade Commissioner Service, Agri-Food Trade Service, July 2003. *See also* Exhibit 13, "Mexicans are second-largest soft drink consumer in world," *Corporate Mexico*, September 4, 2003.

[15] HFCS is produced commercially in three grades, denominated according to their percentage concentration of fructose, i.e., HFCS-42, HFCS-55, and HFCS-90. The principal uses of HFCS-42 are as a sweetener in food items and as an input in the manufacture of HFCS-55. HFCS-42 is also used in the beverage industry to a lesser extent, including for some juices and carbonated beverages.

with sugar, sells for a lower price than the equivalent amount of sugar needed as a sweetener in any particular product. Second, although HFCS is sold in liquid form ready for beverage use, a bottler who uses sugar must undertake the additional effort and expense of converting it to liquid form. Third, HFCS is easier to store than sugar. Fourth, carbonated beverages made with HFCS are more shelf-stable.

C. Mexico Was a Prime Market for HFCS Investment

1. Mexico's Soft Drink Industry

37. As noted above, Mexico is the second largest per capita consumer of soft drinks. The Mexican soft drink industry includes the world's second largest Coca-Cola bottler, Fomento Empresarial Mexicano ("FEMSA"). Before 1993, the Mexican soft drink industry was an emerging market for HFCS-55. Since U.S. soft drink producers, such as Coca-Cola and Pepsi, held interests in Mexican bottlers, it was clear that Mexico could be an excellent market for HFCS if conditions were right.

38. Mexico was a natural destination for investment in HFCS production. Mexico already had a corn-refining industry, including firms like ALMEX that had been producing products other than HFCS for food, beverage, and industrial applications. In addition, yellow corn, the principal input for HFCS, was available from the United States, although it was not available in Mexico in significant quantities. However, until the 1990s, domestic capital for HFCS investment was unavailable, and foreign capital was deterred by, among other things: (a) the lack of effective legal protection for foreign investment; (b) the power of Mexico's sugar industry; and (c) heavy government intervention in the market.

39. Claimants recognized the tremendous potential to capture market share in Mexico's sweetener industry, particularly for sales of HFCS-55 to soft drink manufacturers. They also identified potential to sell HFCS-42 to Mexican industries that needed sweeteners for products such as catsup, bread, baked goods, juices, non-carbonated beverages, alcoholic beverages, table syrups, jellies, and processed foods. After studying these opportunities, ADM and Staley concluded that HFCS could succeed in Mexico due to its many comparative advantages, including price.

2. Mexico's Liberalized Trade and Investment Policy

40. During the 1970s and 1980s, the Mexican sugar industry was closely tied to the Government in a system of rigid laws and ownership relations that had been in place for decades, making the sugar sector a Government protectorate. Mexican laws required sugar mills to purchase the entire sugar harvest of neighboring farms and offered large subsidies to mills and growers. Government ownership of sugar mills was common. The political influence of the industry and its sugar workers was enormous. The Chamber of the Sugar Industry ("Sugar Chamber") and the unions of cane growers and sugar mill workers have been major supporters of the Partido Revolucionario Institucional, which was the ruling party in Mexico for 71 years and which controls the majority in the Mexican Congress.

41. By the mid-1990s, Mexico appeared to have committed itself to free and open trade and investment. It had embarked on a series of market liberalization measures that significantly

increased the attractiveness of Mexico for foreign investment. Most importantly, the Mexican Government signed the NAFTA, a binding treaty that committed Mexico, Canada, and the United States to tariff reduction and elimination, quota reduction and elimination, other market opening measures, investment liberalization, and strong protection for investments.

42. As part of its effort to create an open and competitive marketplace, Mexico dismantled significant barriers to trade and investment in HFCS sales and production. The Mexican Government also took steps to reduce its involvement in the sugar industry by privatizing Mexican sugar producers and permitting competitive pricing.

43. Most importantly, the Mexican Secretary of Commerce and Industry ("SECOFI") signed an agreement in April 1994 with IDAQUIM, an association of wet millers, including ALMEX, that guaranteed unlimited duty free imports of U.S. yellow corn for the production of, among other things, "fructose." This agreement assured prospective investors in HFCS production and distribution operations, such as ADM and Staley, that this essential raw material, which is not produced in sufficient quantities in Mexico, would always be available.

44. Mexico's actions directly encouraged ADM and Staley to conclude that they could produce and sell HFCS in Mexico in an open and competitive marketplace. Nonetheless, ADM and Staley considered it prudent to consult directly with the Mexican Government before undertaking any investment in Mexico in HFCS facilities. They met with cabinet-level officials in the Mexican Government, including two Secretaries of Commerce and Industry, Jaime Serra Puche and Herminio Blanco, to discuss their proposed investment in ALMEX, which, at the time, did not produce HFCS. These officials, on behalf of Mexico, encouraged ADM and Staley to proceed with their investments.

D. The Claimants' Investments in ALMEX

45. Almidones Mexicanos, S.A., first began its corn milling activities in 1960. Staley first invested in the company in 1968, bringing to the venture both capital and its advanced milling technology. In 1990, Staley acquired 100 percent of the equity of ALMEX and initiated an expansion of production capacity. In 1993, Staley formed a joint venture with ADM to operate ALMEX, in which each company held a 50 percent equity interest.

46. ALMEX's Board of Directors consists of four individuals. ADM and Staley each appoint two directors. The directors select ALMEX's senior management and make strategic and investment decisions. ALMEX currently owns and operates corn wet milling, HFCS refining, storage, transportation, and distribution facilities in Mexico. ADM and Staley have historically shipped a portion of their U.S. HFCS production to ALMEX, including HFCS-42, HFCS-55, and HFCS-90, for consumption as raw material inputs or distribution as finished goods.

47. Prior to its acquisition, ALMEX had refined corn to produce products such as natural hydrolyzed and oxidized corn starch, corn gluten, corn oil, glucose, and dextrose. However, ALMEX did not have HFCS refining capacity. In 1993, ADM and Staley did not believe the environment was conducive for adding HFCS refining operations to ALMEX, primarily due to Mexico's quotas and duties on imports of yellow corn. However, they recognized the potential

for sales of HFCS in Mexico and believed that ALMEX could build an HFCS customer base through sales and distribution operations by ALMEX.

48. Claimants were unwilling to make a major investment commitment to ALMEX until April 1994, which was when the Mexican Government signed an agreement with IDAQUIM, an association of wet millers, including ALMEX, that permitted IDAQUIM's members to import unlimited quantities of duty free U.S. yellow corn. Based on this agreement, as well as the signal given to investors by the entry into force of NAFTA, including the investment guarantees in NAFTA's Chapter 11, and other assurances from the Mexican Government, the Claimants decided that the time was right to invest in HFCS production operations, and they expanded distribution capacity at ALMEX. Starting in mid-1994, Claimants began to invest significantly to develop ALMEX's HFCS production and distribution capacity.

49. By December 1995, ALMEX had begun producing HFCS-42. ALMEX used a portion of its HFCS-42 production to produce HFCS-55 by blending it with HFCS-90 supplied by ADM. It sold its remaining HFCS-42 production to Mexican purchasers. It also distributed to Mexican purchasers HFCS-55 that it obtained from the U.S. production facilities of Claimants. ADM expanded U.S. production capacity in anticipation of being able to use ALMEX's distribution facilities to supply increasing volumes of HFCS to the Mexican market.

E. ALMEX Rapidly Succeeds in Gaining Market Share

50. Prior to the introduction of HFCS-55, Mexico's sugar industry had been the sole source of sweetener for the Mexican soft drink industry. Once Claimants, ALMEX, and other U.S. companies built their HFCS business in Mexico, they rapidly gained sales at the expense of Mexican sugar refiners. Between 1994 and 2000, aggregate sales of HFCS-55 to Mexican soft drink bottlers increased by over 1,000 percent. ALMEX's sales growth for HFCS-55 was equally stunning. Given the comparative advantages of HFCS-55 over sugar, including its 10 to 13 percent price advantage, it is not surprising that Mexican bottlers of soft drinks shifted rapidly from sugar to HFCS-55 once HFCS became available from ALMEX and other sources.

51. By 2001, HFCS had captured about 25 percent of the Mexican market for soft drink sweeteners and was continuing to gain market share at a rapid pace. ALMEX was justifiably optimistic about the future of its HFCS-55 production and distribution opportunities in the Mexican market. However, for reasons explained in detail below, ALMEX's further opportunities for growth have collapsed due to multiple discriminatory actions by the Mexican Government, culminating in the discriminatory HFCS tax.

F. Mexico Intervenes to Protect the Mexican Sugar Industry At the Expense of Foreign Investors in HFCS Production

52. Mexico's two HFCS producers are now owned entirely by U.S. investors.[16] Their early success did not go unnoticed. As HFCS gained market share at the expense of sugar, the

[16] Only one other company besides ALMEX has produced HFCS in Mexico: Arancia Corn Products, S.A. de C.V. ("Arancia"). Since March 4, 2002, Arancia has been wholly owned by a U.S. company, Corn Products International, Inc.

Mexican sugar industry sought government assistance to reverse this trend. In response to the industry's pressure, the Mexican Government repeatedly engaged in unlawful actions designed to help Mexican-owned sugar producers and interfere with the production and sale of HFCS in Mexico.

53. First, on February 21, 1997, at the request of the Sugar Chamber, the Government of Mexico initiated an antidumping investigation of HFCS imported into Mexico from the United States. Mexico then imposed antidumping duties until May 2002, based on a determination by SECOFI that HFCS and sugar are commercially interchangeable and constitute the same "like product" under Article 2.6 of the WTO Antidumping Agreement and Article 37 of Mexico's Foreign Trade Law.[17] The WTO and a panel convened under NAFTA Chapter 19 both ruled that these duties were illegal.

54. Other attacks on the U.S.-owned HFCS industry included: repeated breaches of the agreement with IDAQUIM that interfered with ALMEX's right to timely, unlimited corn imports; imposition of a tariff rate quota on HFCS; and a requirement for ALMEX to obtain special permits to import HFCS within the TRQ.

G. Mexico Imposes the HFCS Tax

55. Continuing its pattern of interfering with the production and sale of HFCS in Mexico, effective January 1, 2002, the Mexican Government imposed a tax of 20 percent on the sale and importation of a wide variety of beverages that contained HFCS. The Mexican Congress enacted the HFCS tax on December 30, 2001, effective January 1, 2002, as an amendment to a pre-existing tax law called the *Ley del Impuesto Especial sobre Producción y Servicios*. This law, first enacted in 1980, provides for excise taxes applied to sales of specific products or services, including gasoline, alcoholic beverages, and tobacco products.[18] The IEPS is the third largest source of tax revenue for Mexico, after income and value-added taxes.

56. The fact that the law targeted HFCS was clear from its text, which imposed a tax on "carbonated or mineral waters; soft drinks; hydrating or rehydrating beverages; concentrates, powders, syrups, flavor essences or extracts that can be diluted to produce soft drinks, hydrating or rehydrating beverages, *which use sweeteners other than cane sugar*," and on "syrups or concentrates for preparing soft drinks sold in open containers, prepared using automatic, electrical or mechanical equipment, *which use sweeteners other than cane sugar*."[19] The law defined "soft drinks" as beverages which, *inter alia*, "contain fructose," and it

[17] *See* Resolución final de la investigación antidumping sobre las importaciones de jarabe de maíz de alta fructosa, Diario Oficial, January 23, 1998, pp. 67-68, paras. 423-26.

[18] Claimants do not challenge the validity of the IEPS or the Mexican Government's authority to impose legitimate excise taxes. Rather, Claimants challenge only the HFCS tax, an illegitimate tax that intentionally discriminates against foreign-owned HFCS investment in Mexico in favor of the Mexican sugar industry.

[19] Exhibit 14, *Ley del Impuesto Especial sobre Producción y Servicios*, Diario Oficial, January 1, 2002, p. 32, Articles 2(I)(G) and 2(I)(H) (emphasis added) (unofficial translation).

specified that beverages or syrups would be exempt from tax if they used "exclusively cane sugar as a sweetener."[20]

57. The tax is imposed on producers, bottlers, distributors, and importers of the above-enumerated drinks. All drinks that use only cane sugar as a sweetener are specifically exempted from the tax. The tax is imposed on the sales price of the goods concerned, which is a much higher value than their HFCS content. The cost of the tax on bottlers (i.e., 20 percent of the soft drink's sales price) is so high as to make it prohibitively expensive for bottlers to pay it and still make a profit.

58. Public information confirms the discriminatory purpose of the HFCS tax. The Report of the Finance Committee of the Mexican Chamber of Deputies on this legislation stated that the soft drink tax was intended to "avoid damaging the sugar industry" by applying the tax "exclusively to beverages which are manufactured with fructose in substitution for cane sugar."[21] Moreover, Mexico's then Secretary of the Economy, Ernesto Derbez, commented that the HFCS tax violates the NAFTA, would negatively impact foreign investment, distorts the sweetener market between Mexico and the United States, and discriminates in favor of the Mexican industry.[22]

59. Immediately after the tax took effect on January 1, 2002, Mexican producers of covered beverages and syrups switched back to sugar. Since the tax was imposed on the value of the entire beverage and not on the value of the HFCS content of the beverage, Mexican beverage producers would not have been able to use HFCS economically even if ALMEX had given HFCS to them for free. Beverage producers returned sizable inventories of HFCS to ALMEX, which then had to dispose of these inventories at distress prices or destroy them.

60. Responding to arguments that the tax illegally discriminated against HFCS, President Vicente Fox Quesada temporarily suspended the tax on March 5, 2002, until September 30, 2002, by a decree issued under a provision of the Fiscal Code authorizing the President to provide temporary tax relief to particular sectors of the economy. The same members of the Mexican Congress that had promoted the tax immediately reacted. On April 5, the Chamber of Deputies voted to challenge the constitutionality of the Fox decree. On July 12, 2002, the Mexican Supreme Court ruled that the President's suspension decree was unconstitutional and void because the Fiscal Code provision did not authorize temporary suspension of a statute in a manner that would contradict the statute's fundamental purpose. Citing the Finance Committee's report, the Supreme Court ruled that the intention of the HFCS tax was "to protect the sugar industry" and that President Fox's action nullified the "non-fiscal purpose" of the

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[20] *Id.*, Article 3(XV), Article 8(I)(f) (unofficial translation).

[21] Exhibit 15, excerpts from the Report of the Finance Committee of the Mexican Chamber of Deputies, *Gaceta Parlamentaria*, no. 911-IV, December 30, 2001, available at http://gaceta.cddhcu.gob.mx/Gaceta/58/2001/dic/Anexo-IV-30Dic.html (unofficial translation).

[22] *See* Exhibit 16, "Tax on corn syrup violates NAFTA," *Corporate Mexico*, March 8, 2002. *See also* Exhibit 17, "Derbez – Fructosa," *Servicio Universal de Noticias*, July 17, 2002.

law.[23] On that basis the Court annulled the temporary suspension of the tax and reinstated the tax effective July 16, 2002.

61. At the end of 2002, the Mexican Congress renewed the IEPS for 2003 and voted to continue the HFCS tax in modified form, exempting drinks with more than 20 percent fruit juice.[24] In 2003, the Fox Administration sought revocation of the tax, but was rejected by the Chamber of Deputies. The IEPS for 2004, as approved on December 28, 2003, applies a 20 percent tax to the same beverages as the 2003 version of the IEPS (i.e., it exempts certain fruit juices). It still exempts from taxation those beverages, syrups, or concentrates that are "exclusively sweetened with cane sugar."[25]

H. Impact of HFCS Tax on ADM, Staley, and ALMEX

62. The HFCS tax had the practical effect of prohibiting the use of HFCS-55 in the beverage business in Mexico, beginning on January 1, 2002. The impact of the tax on ALMEX's HFCS-55 and HFCS-42 production and sales was immediate and devastating. As noted above, upon institution of the tax, ALMEX's customers returned HFCS products, which had to be destroyed or disposed of at distress prices. ALMEX's sales of HFCS-55 declined by 90 percent between 2001 and 2002 and ceased completely by 2003. Its production of HFCS-42 also declined significantly.

63. ADM and Staley, which had expanded HFCS production to supply inputs for ALMEX's growing HFCS-55 production and distribution business, also experienced immediate and continued losses as a result of the tax. In 2002, ADM was only able to ship minimal HFCS volumes to ALMEX. Staley was unable to ship any HFCS to ALMEX in 2002. In 2003 and 2004, neither ADM nor Staley has been able to ship any HFCS to ALMEX. In summary, the HFCS tax destroyed Claimants' and ALMEX's hopes for growth and increased production and distribution of HFCS-55 and HFCS-42 in Mexico.

I. Unsuccessful Efforts by ADM, Staley, and ALMEX to Remove the Tax

64. Since January 2002, Claimants and ALMEX have repeatedly attempted to obtain removal of the HFCS tax, by direct representations and negotiation with the Mexican Government. In the first months of 2002, immediately after the HFCS tax was enacted, senior officers of ADM and Staley and the Corn Refiners Association met with the Mexican Secretary of Economy in Washington, D.C., to argue that the tax is illegal, unfair, and discriminatory, and to urge its removal. From January 2002 through July 2004, officers of ALMEX repeatedly wrote to and met with Mexican Government officials, including the Secretary of Economy, Undersecretary of Economy, Secretary of Treasury, Secretary of Foreign Relations, Secretary

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[23] Exhibit 18, excerpts from the Decision by the Suprema Corte de Justicia de la Nación, Diario Oficial, July 17, 2002, pp. 79-80 (unofficial translation).

[24] Exhibit 19, *Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Ley del Impuesto Especial sobre Producción y Servicios*, Diario Oficial, December 30, 2002, p. 324.

[25] Exhibit 20, excerpts from *Ley del Impuesto Especial sobre Producción y Servicios*, Cámara de Diputados, as amended December 31, 2003.

of Agriculture, and Senators and Deputies, to urge removal of the tax. Senior officers of ADM and Staley and the President of the Corn Refiners Association also met in Mexico City with the Secretaries of Foreign Relations, Agriculture, and Economy in October 2003 to communicate the same message. All of these efforts were unsuccessful in resolving the present dispute.

III. LEGAL CLAIMS UNDER NAFTA CHAPTER 11

65. The HFCS tax is a measure of Mexico,[26] which breaches obligations under provisions of NAFTA Chapter 11, as set forth below: National Treatment (Article 1102), Performance Requirements (Article 1106), and Expropriation and Compensation (Article 1110).

A. The HFCS Tax Violates Mexico's National Treatment Obligations Under NAFTA Article 1102

66. Article 1102 requires Mexico to accord investors of another NAFTA Party, and investments of investors of another Party, treatment no less favorable than it accords, in like circumstances, to its own investors and their investments with respect to "establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments."

67. HFCS investments in Mexico are exclusively owned by U.S. investors. Thus, the HFCS tax adversely affects only investors of another NAFTA Party and their investments. Under Article 1102, Mexico is obligated, among other things, to accord HFCS investors and their investments (i.e., ADM, Staley, and their investment, ALMEX), treatment no less favorable than it accords, in like circumstances, to its own sweetener producers (i.e., Mexican sugar refineries).

68. It is indisputable that HFCS investments in Mexico are in "like circumstances" with Mexico's sugar producers. HFCS and sugar producers participate in the same economic and business sector. They compete to supply interchangeable types of sweeteners to the same market of beverage and syrup manufacturers. Moreover, the Mexican Government has made official determinations supporting this conclusion on a number of occasions.

69. First, in an antidumping order issued in January 1998, SECOFI determined that ALMEX belonged to the same domestic industry as Mexican sugar refiners. Second, Mexican legislators then agreed with this determination when they enacted the HFCS tax in December 2001 in order to protect sugar by taxing HFCS. The competitive relationship between HFCS and sugar was implicit in the HFCS tax, which the legislators discussed during passage of the tax in 2001 and renewal of the tax in 2002 and 2003. Third, the Mexican Supreme Court ruled in July 2002 that protecting sugar by taxing HFCS was the HFCS tax's central animating concern.[27] This ruling necessarily assumed that HFCS and sugar are in the same industry and compete directly.

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[26] *See* discussion above at paragraph 23.

[27] *See* Exhibit 18.

70. Sugar and HFCS producers sell products that are substantially similar and commercially interchangeable, use the same channels of distribution, and serve the same base of beverage customers. In fact, Mexican producers of soft drinks, other non-alcoholic beverages, and syrups have shifted back and forth between these two sources of supply depending on their relative cost and availability. Thus, Mexican soft drink manufacturers easily and quickly substituted sugar for HFCS upon institution of the HFCS tax. Publicly available profitability data concerning certain Mexican sugar refiners confirms that these companies benefited directly from the tax, experiencing dramatic increases in profitability due to the substantial increase in sugar use resulting from the tax.

71. Mexico's HFCS tax fails to accord national treatment to ALMEX and to Claimants. Under Article 1102, the standard of national treatment for a foreign investor is the *best* treatment accorded to any domestic investor or investment under like circumstances. The best treatment accorded to Mexican sugar producers consists of exemption from taxation, for beverages and syrups that are sweetened *exclusively* with cane sugar are exempt from the HFCS tax. The Mexican Government has no legitimate public policy basis for the tax because the sole basis for this tax is protectionism. The tax on beverages and syrups has raised little or no revenue because soft drink producers, as a result of the tax, were economically compelled to switch back to sugar. Since any soft drink with HFCS carries a 20 percent tax, Mexico's soft drink producers have stopped buying HFCS and are relying solely on cane sugar.

72. The Mexican Government was well aware when it enacted the tax that the only HFCS available in Mexico was: (a) produced in Mexico by the investments of U.S. investors and distributed by those investments, or (b) produced in the U.S. and distributed by the Mexican investments of U.S. investors. The sole purpose of the tax was to protect Mexico's sugar industry from free and fair competition with HFCS. As discussed, Mexican Government officials stated publicly that they intended the tax to stop the production, distribution, and sale of HFCS made by U.S. investments and investors, and they have accomplished their objective.

73. The HFCS tax has, as intended, eliminated the most significant customer base for ALMEX and the primary impetus behind the original investment of ADM and Staley and planned expansion. The HFCS tax has caused ALMEX to stop producing and selling HFCS-55 and has caused a substantial decline in ALMEX's HFCS-42 production. In addition, the tax has adversely affected the investors' U.S. investments and operations undertaken to supply inputs to ALMEX's production. The lost profits, lost sales, and other damages to ALMEX and its investors from this discrimination are massive and continuing.

B. The HFCS Tax Imposes Performance Requirements In Violation of NAFTA Article 1106

74. NAFTA Article 1106(3) prohibits the Mexican Government from, among other things, conditioning "the receipt or continued receipt of an advantage, in connection with an investment in its territory or an investor of a Party" on compliance with a requirement "to achieve a given level or percentage of domestic content" or "to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory." Article 2103 of the NAFTA permits a claim involving taxation measures to be made under Article 1106(3).

75. The HFCS tax offers benefits (i.e., exemption from taxation) to Mexican manufacturers of soft drinks and beverage syrups and concentrates, and conditions those benefits on sweetening those drinks *exclusively* with (Mexican) cane sugar. The tax applies to drinks sweetened with any amount of HFCS or other non-cane sugar sweetener. It imposes a domestic content requirement by requiring the use of sugar from Mexican producers as opposed to HFCS produced and sold by investments of U.S. investors.

76. The receipt of advantages by bottlers from the use of sugar, as opposed to HFCS, is directly connected with "an investment in its territory or an investor of a Party." That is, those advantages adversely affect the growth of HFCS sales in Mexico and its competition with domestic sugar production. As such, the HFCS tax imposes an impermissible performance requirement in violation of Article 1106(3).

C. The HFCS Tax Is an Expropriation Under NAFTA Article 1110

77. Under NAFTA Article 1110, "[n]o party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment," except: (a) for a public purpose; (b) on a non-discriminatory basis; (c) in accordance with due process of law and Article 1105(1); and (d) on payment of compensation equivalent to the fair market value of the expropriated investment.

78. Article 1110 is not limited to direct expropriation involving the physical taking of property. It also includes indirect expropriation or measures tantamount to an expropriation. Mexico's HFCS tax is an indirect expropriation and a measure tantamount to an expropriation. It effectively deprived ADM and Staley of the use of a significant part of ALMEX's business, as well as reasonably expected economic benefits flowing from it. Specifically, the tax terminated the ability of ADM, Staley, and ALMEX to sell HFCS-55 to soft drink customers in Mexico using ALMEX's production facilities, storage and distribution system, and marketing expertise. In addition, the HFCS tax has indirectly expropriated a portion of ALMEX's production and sale of HFCS-42 in Mexico. The HFCS tax resulted in a substantial deprivation of the value of ADM's and Staley's investment and interference with their use and enjoyment of that investment.

79. ADM and Staley invested in ALMEX for the purpose of producing and supplying sweetener to Mexico's soft drink industry. ALMEX's growth and potential expansion depended on expanded sales to this market. The HFCS tax, which deprives ALMEX of this customer base, has forced ALMEX to almost completely abandon the production and sale of its principal product. As a result, the tax has had the effect of idling a significant portion of ALMEX's production, distribution, and storage facilities. Likewise, the HFCS tax has blocked ALMEX's planned expansion of production capacity and deprived it of expected growth in sales of HFCS-55 in Mexico.

80. Although ALMEX's HFCS-42 business has not been completely eliminated by the tax, it has been substantially reduced. Moreover, the Mexican market for HFCS-42 is insufficient to replace lost HFCS-55 sales. ALMEX has been forced to drastically reduce its corn grind and production of HFCS-42 as a result of the tax.

81. Having effectively expropriated ADM's and Staley's investment, the Mexican Government must pay compensation under Article 1110(2) that is equivalent to the fair market value of the expropriated investment immediately before the expropriation took place. As of the date of the filing of this Request, the Mexican Government has not offered to pay, nor has it paid, any compensation to ADM, Staley, or ALMEX to offset the damages that ADM, Staley, and ALMEX have suffered by reason of the expropriation.

IV. RELIEF AND REMEDY SOUGHT

82. ADM and Staley are seeking the following relief as a result of the actions and breaches by the Government of Mexico described above:

a. Damages not less than U.S. $100 million arising from the Government of Mexico's breaches of its NAFTA obligations, including lost sales opportunities and lost profits, sufficient to restore the companies to their pre-HFCS tax status;

b. Costs associated with these proceedings, including all professional fees and disbursements;

c. Pre-award and post-award compound interest at a rate to be fixed by the tribunal;

d. An increase in the amount of the award to offset the amount of any tax consequences, in order to maintain the integrity of the award; and

e. Such further relief as the tribunal deems appropriate and just.

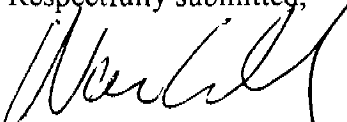
V. REQUIRED COPIES, PAYMENT, AND POWER OF ATTORNEY

83. In accordance with Article 3 of the AF Arbitration Rules as amended and the March 8, 2004, Schedule of Fees, this Request is accompanied by five additional signed copies and by a non-refundable fee of U.S. $15,000. The undersigned counsel certify that all copies of documents attached as exhibits to this Request are copies of original documents.

84. In this proceeding, as duly authorized, ADM is represented by the law firm of Akin Gump Strauss Hauer & Feld LLP, and Staley is represented by the law firm of Sidley Austin Brown & Wood LLP. The law firms of Akin Gump Strauss Hauer & Feld LLP and Sidley Austin Brown & Wood LLP represent ALMEX. The submission filed by Claimants on November 4, 2003, supplementing their October 14, 2003, Notice of Intent to Submit a Claim to Arbitration contains copies of these authorizations and is provided in Exhibit 8.

All correspondence related to this proceeding should be delivered to Warren E. Connelly and to Daniel M. Price at the addresses provided below.

Respectfully submitted,



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August 4, 2004

LIST OF EXHIBITS

1. Certificate of Incorporation of ADM from the State of Delaware.

2. ADM's authorization for filing this claim.

3. Certificate of Incorporation of Staley from the State of Delaware.

4. Staley's authorization for filing this claim.

5. Certificate of Incorporation of ALMEX.

6. ALMEX's authorization for filing this claim.

7. Claimants' Notice of Intent to Submit a Claim to Arbitration and cover letter to Respondent delivered on October 14, 2003.

8. Additional information provided to Mexico on November 4, 2003 (Spanish translations of English documents have been omitted for conciseness).

9. Cover Letter to Assistant Secretary of the Treasury dated October 14, 2003.

10. Cover Letter to Mexico's Deputy Minister of Revenue dated November 25, 2003.

11. Written Consents and Waivers by ADM, Staley, and ALMEX.

12. Excerpts from "The Fruit Juice and Soft Drink Market in Mexico," the Market Research Centre and the Canadian Trade Commissioner Service, Agri-Food Trade Service, July 2003.

13. "Mexicans are second-largest soft drink consumer in world," *Corporate Mexico*, September 4, 2003.

14. *Ley del Impuesto Especial sobre Producción y Servicios*, Diario Oficial, January 1, 2002.

15. Excerpts from the Report of the Finance Committee of the Mexican Chamber of Deputies, *Gaceta Parlamentaria*, no. 911-IV, December 30, 2001.

16. "Tax on corn syrup violates NAFTA," *Corporate Mexico*, March 8, 2002.

17. "Derbez – Fructosa," *Servicio Universal de Noticias*, July 17, 2002.

18. Excerpts from the Decision by the Suprema Corte de Justicia de la Nación, Diario Oficial, July 17, 2002.

19. *Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Ley del Impuesto Especial sobre Producción y Servicios*, Diario Oficial, December 30, 2002.

20. Excerpts from *Ley del Impuesto Especial sobre Producción y Servicios*, Cámara de Diputados, as amended December 31, 2003.