

**International Centre for Settlement of Investment Disputes**

1818 H Street, N.W., Washington, D.C. 20433, U.S.A.  
Telephone: (202) 458-1534 Faxes (202) 522-2615/2027  
Website: www.worldbank.org/icsid

**By email**

July 18, 2007

Cargill, Incorporated  
c/o Messrs. Jeffrey W. Sarles and  
Mark W. Ryan  
Mayer, Brown, Rowe & Maw LLP  
and  
c/o Mr. Glen Goldman  
Cargill, Inc.  
Washington, D.C. 20006-1101

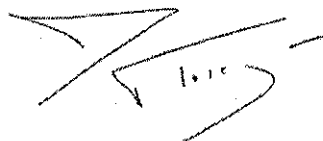
United Mexican States  
c/o Lic. Luis Alberto Gonzalez and  
Lic. Alejandra G. Treviño  
Secretaría de Economía  
Alfonso Reyes #30, Piso 17  
Colonia Condesa  
C.P. 06140  
México, D.F.

**Ref. Cargill, Incorporated v. United Mexican States  
(ICSID Case No. ARB(AF)/05/2)**

Dear Sirs and Madam,

Please find attached a copy of the Tribunal's Procedural Order No. 3 in the above case. Certified copies of the Order will be sent to you shortly.

Sincerely yours,



Gonzalo Flores  
Secretary of the Tribunal

Attachments

c.c. (by email – with attachments):

Members of the Tribunal

Cargill

5110700587

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By courier—advance copy of cover letter by email

July 20, 2007

Cargill, Incorporated  
c/o Messrs. Jeffrey W. Sarles and  
Mark W. Ryan  
Mayer, Brown, Rowe & Maw LLP  
and  
c/o Mr. Glen Goldman  
Cargill, Inc.  
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México, D.F.

**Ref. Cargill, Incorporated v. United Mexican States  
(ICSID Case No. ARB(AF)/05/2)**

Dear Sirs and Madam,

Further to my letter of July 18, 2007; please find enclosed certified copies of the Tribunal's Procedural Order No. 3 in the above case.

Sincerely yours,

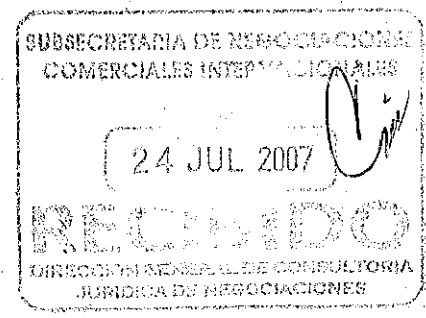


Gonzalo Flores  
Secretary of the Tribunal

Enclosures

c.c. (by courier – with enclosures):

Members of the Tribunal



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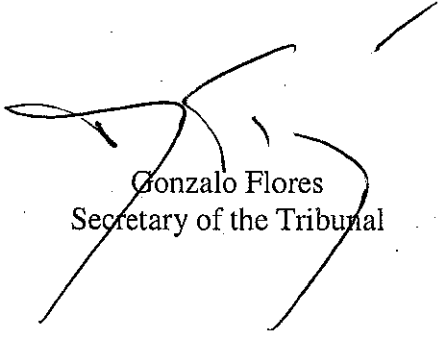
**CERTIFICATE**

Cargill, Incorporated

v.

United Mexican States  
(ICSID CASE No. ARB(AF)/05/2)

I hereby certify that the attached document is a true copy of the Tribunal's  
Procedural Order No. 3 of July 18, 2007.



Gonzalo Flores  
Secretary of the Tribunal

Washington, D.C., July 20, 2007

PROCEDURAL ORDER No. 3

18 July 2007

Cargill, Incorporated, Claimant

v.

United Mexican States, Respondent

ICSID Case No. ARB(AF)/05/2

An arbitration Under Chapter 11 of the North American Free Trade Agreement (NAFTA), in accordance with ICSID Additional Facility Arbitration Rules (2003)

Michael C. Pryles, President  
David D. Caron, Member  
Donald M. McRae, Member

**Background**

1. The Respondent, in its Counter Memorial, has asserted that the Tribunal lacks jurisdiction "to recognise two of the three measures of the Cargill claim and..... the Respondent requests that the Tribunal suspend the proceedings and..... resolve the objections to its jurisdiction as a preliminary matter".
2. The Claimant, in its Reply Memorial objects to the bifurcation of the proceedings contending that:
  - (a) this would substantially delay the proceeding and increase the costs to the parties;
  - (b) most of the Respondent's jurisdiction objections are not jurisdictional at all, and those that might be deemed jurisdictional are exceedingly weak; and
  - (c) the bulk of the Respondent's objections are inextricably intertwined with the merits.
3. The Tribunal, in its letter to the parties of 6 July 2007, noted that this proceeding is governed by the *ICSID Arbitration (Additional Facility) Rules 2003* ("Rules"). In accordance with Article 45(4) of the Rules, the proceeding on the merits was suspended.
4. On 9 July 2007 the Claimant advised that it did not intend to further comment on the Respondent's jurisdictional objections.
5. The Respondent provided a further Submission dated 12 July 2007. It contended, *inter alia*, that resolving jurisdictional objections as a preliminary matter is not only consistent with the applicable arbitration rules, but would also bring efficiency and economy to the consideration of any surviving claim; that the written procedure under the Rules is designed to narrow the factual and legal issues in dispute; that there are numerous jurisdictional issues that divide the parties; and that the Respondent believes that its jurisdictional objections will be upheld.

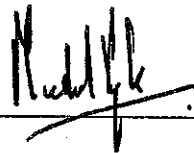
6. The Claimant in its letter of 12 July 2007 objected to the Respondent's further submission and provided comments on its content.

### Discussion

7. Article 45(5) of the Rules gives the Tribunal the discretion to deal with a jurisdictional objection as a preliminary question or to join it to the merits of the dispute.
8. Bifurcation would be appropriate if dealing with the jurisdictional objection as a preliminary question would hold out a prospect of substantial efficiency in the conduct of the arbitration and consequent saving of costs.
9. However in this case the Tribunal is far from persuaded that bifurcation would achieve economy or savings of costs. In this regard the Tribunal notes the following:
- (a) the Respondent's application to bifurcate has been raised at a stage when the bulk of the memorials on the merits have already been provided;
  - (b) even if the jurisdictional objections were upheld, they would not furnish a complete defence to the claim and it would still be necessary to have a hearing on the merits of some of the Claimant's case; and
  - (c) in all probability bifurcation of the proceedings would result in two hearings, one dealing with the jurisdictional objections and the other dealing with the merits and this would, in all likelihood, extend the duration of the arbitration and increase costs.
10. Furthermore, the Tribunal considers that the link between the jurisdictional objections and the merits also makes joinder appropriate in this case.

### Order

11. The Tribunal declines to order the bifurcation of the proceedings and decides that the jurisdictional objections raised by the Respondent will be decided together with the merits of the case.
12. The proceeding on the merits is resumed.
13. The Orders made in Procedural Order No. 2 stand.



Michael C. Pryles

President of the Tribunal on behalf of the Tribunal

David D. Caron, Member  
Donald M. McRae, Member

**LIC. LUIS ALBERTO GONZÁLEZ GARCÍA**

DIRECTOR DE LA CJN

Presente

Fecha: 26-07-2007 09:07 a.m.

Volante: 5110700587-01

Seguimiento:

Referencia:

Documento: S/N

Firmante: Gonzalo Flores

Cargo: Secretario del Tribunal

24-07-07 GF ENVÍA POR COURIER CARTA EN LA QUE ANEXA COPIAS CERTIFICADAS DE LA ORDEN DE PROCEDIMIENTO DEL TRIBUNAL No. 3 REFERENTE AL CASO CARGILL, INCORPORATED v EL GOBIERNO DE LOS ESTADOS UNIDOS MEXICANOS.

**CONOCIMIENTO**

Atentamente



**CRISTINA REYES RODRIGUEZ**  
SECRETARIA DE LA DGCJN

c.c.p. LIC. MARIANO GOMEZPERALTA CASALI

**Secretaría de Economía**

**Sub. de Negociaciones Comerciales Internacionales**

Dirección General de Consultoría Jurídica de Negociaciones

Volante: 5110700587-01

Seguimiento:

Fecha de contestación:

**No requiere respuesta**

**Nombre y firma del responsable**

## International Centre for Settlement of Investment Disputes

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### By email

August 1, 2007

Dr. Michael C. Pryles  
Level 18,  
333 Collins Street  
Melbourne Vic 3000  
Australia

Professor David D. Caron  
C. William Maxeiner Distinguished  
Professor of International Law  
School of Law, Boalt Hall  
University of California at Berkeley  
Berkeley, California 94720

Professor Donald M. McRae  
Faculty of Law, Common Law Section  
University of Ottawa  
Ottawa, Ontario  
K1N 6N5 Canada

Ref. **Cargill, Incorporated v. United Mexican States**  
**(ICSID Case No. ARB(AF)/05/2)**

Dear Members of the Tribunal,

Please find attached a copy of a letter dated August 1, 2007, which we have received from counsel for the Claimant.

Sincerely yours,



Gonzalo Flores  
Secretary of the Tribunal

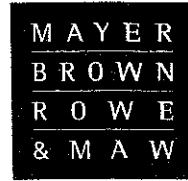
### Attachments

c.c. (by email - without attachments):

Cargill, Incorporated  
c/o Messrs. Jeffrey W. Sarles and  
William H. Knull  
Mayer, Brown, Rowe & Maw LLP  
and  
c/o Mr. Glen Goldman  
Cargill, Inc.  
Washington, D.C. 20006-1101

c.c. (by email - with attachments):

United Mexican States  
c/o Lic. Luis Alberto Gonzalez and  
Lic. Alejandra G. Treviño  
Secretaría de Economía  
Alfonso Reyes #30, Piso 17  
Colonia Condesa  
C.P. 06140  
México, D.F.



August 1, 2007

Gonzalo Flores  
Senior Counsel  
ICSID  
1800 G Street - Third Floor  
Washington, DC 20433

Mayer, Brown, Rowe & Maw LLP  
71 South Wacker Drive  
Chicago, Illinois 60606-4637

Main Tel (312) 782-0800  
Main Fax (312) 701-7711  
[www.mayerbrownrowe.com](http://www.mayerbrownrowe.com)

**Jeffrey W. Sarles**  
Direct Tel (312) 701-7819  
Direct Fax (312) 706-8681  
[jsarles@mayerbrownrowe.com](mailto:jsarles@mayerbrownrowe.com)

Re: Cargill v Mexico, ARB(AF)05/2

Dear Gonzalo:

On behalf of Claimant Cargill, Inc., we request that you bring the following three items to the attention of the Tribunal:

First, as of August 31, 2007, our firm's name will be Mayer Brown LLP.

Second, William H. Knull has replaced Mark Ryan on the Mayer Brown team representing Cargill. Bill's phone number is 1-713-238-3000, his fax number is 1-713-238-4636, and his e-mail address is [wknull@mayerbrown.com](mailto:wknull@mayerbrown.com).

Finally, in reviewing Cargill's Reply Memorial, we noted an inadvertent error. Footnote 213 on page 52 states that, according to Mr. de la Calle's witness statement, he threatened U.S. officials "seven days" after Mexico requested appointment of a Chapter 20 panel. In fact, the time period referenced by Mr. de la Calle extends from August 17, 2000 to August 24 2001, a period of one year and seven days. We therefore ask the Tribunal to disregard the second sentence of footnote 213.

Thank you.

Very truly yours,

Jeffrey W. Sarles

JWS/jm

cc: Respondent's Counsel



**De** Luis Alberto González García  
**A:** gflores@worldbank.org  
**Fecha** lun, Ago 20, 2007 9:22 p.m.  
**Tema:** Cargill Inc c Estados Unidos Mexicanos

Estimado Gonzalo:

Adjunto el escrito de Dúplica de México en español en el caso de referencia. En un correo posterior estaré enviando las testimoniales en inglés. Te pido por favor sea remitido a los miembros del Tribunal. Estaremos enviando las traducciones de cortesía a la brevedad.

Saludos,

Luis

**CC:** Alejandra Galaxia TraviÃ±o SolÃ±s; Jeffrey W. Sarles

**De** Luis Alberto González García  
**A:** gflores@worldbank.org; Jeffrey W. Sarles  
**Fecha** lun, Ago 20, 2007 9:25 p.m.  
**Tema:** Cargill c Estados Unidos Mexicanos (2)

Adjunto las testimoniales anexas al escrito de Dúplica.

Saludos,

Luis

**CC:** Alejandra Galaxia TraviÃ±o SolÃ±s

**De** Luis Alberto González García  
**A:** gflores@worldbank.org; Jeffrey W. Sarles  
**Fecha** lun, Ago 20, 2007 9:27 p.m.  
**Tema:** Cargill c Estados Unidos Mexicanos (3)

Adjunto el segundo reporte de PRA anexo al escrito de Dúplica.

Saludos,

Luis

**CC:** Alejandra Galaxia TraviÃ±o SolÃ±s