14 de Octubre de 2003

Recibí con anexos

Dirección General de Inversión Extranjera
Secretaría de Economía
Avenida de los Insurgentes 1940
Colonia La Florida
01030 México, D.F.

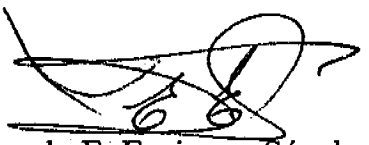
Re: Notificación del Intento de Someter una Reclamación a Arbitraje bajo la Sección del Capítulo 11 del Tratado de Libre Comercio de América del Norte.

En representación de Archer Daniels Midland Company ("ADM") y A.E. Staley Manufacturing Company ("Staley") y su inversion, Almidones Mexicanos, S.A. de C.V. ("ALMEX"), una coinversión del cual son propietarios y controlan, presentamos esta notificación, en idioma inglés y su correspondiente traducción al idioma español por perito certificado, del intento de someter una reclamación a arbitraje por el incumplimiento del gobierno de los Estados Unidos Mexicanos ("México") a sus obligaciones contraídas bajo el Capítulo Décimo Primero del TLCAN.

En términos con la reciente recomendación de la Comisión de Libre Comercio, establecida de conformidad con el artículo 2001(1) del TLCAN, sobre las "Notificaciones del Intento de Someter una Reclamación a Arbitraje", asimismo anexamos copias de las actas constitutivas de ADM, Staley y ALMEX.

Sin más por el momento quedamos a sus ordenes para cualquier aclaración o comentario que requieran.

Atentamente,



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NOTICE OF INTENT TO SUBMIT A CLAIM TO ARBITRATION UNDER SECTION B OF CHAPTER ELEVEN OF THE NORTH AMERICAN FREE TRADE AGREEMENT

ARCHER DANIELS MIDLAND COMPANY

and

A. E. STALEY MANUFACTURING COMPANY,

Claimants,

v.

GOVERNMENT OF THE UNITED MEXICAN STATES,

Respondent.

Pursuant to Articles 1116, 1117, and 1119 of the North American Free Trade Agreement ("NAFTA"), Archer Daniels Midland Company and A. E. Staley Manufacturing Company on behalf of themselves and on behalf of their investment, Almidones Mexicanos S.A. de C.V., a joint venture that they own and control, serve this notice of intent to submit a claim to arbitration for breach by the government of the United Mexican States ("Mexico") of its obligations under Chapter Eleven of the NAFTA.

A. Names and Addresses of Claimants

Claimants are corporations organized under the laws of the United States with principal places of business at the addresses below.

Archer Daniels Midland Company ("ADM")
4666 Faries Parkway
Decatur, Illinois 62526
U.S.A.

A. E. Staley Manufacturing Company ("Staley")
2200 E. Eldorado Street
Decatur, Illinois 62525
U.S.A.

B. Name and Address of the Enterprise on Whose Behalf This Notice Is Also Served

Almidones Mexicanos, S.A. de C.V. ("ALMEX") is a company organized under the laws of Mexico with a principal place of business at the following address.

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

C. Articles of the NAFTA that ADM and Staley Allege Have Been Breached

ADM and Staley allege that the government of Mexico has breached its obligations under Article 1102 (National Treatment); Article 1106 (Performance Requirements); and Article 1110 (Expropriation).

D. Factual Background

ADM is incorporated under the laws of the state of Delaware and is headquartered in Decatur, Illinois. ADM's shares are publicly traded on the New York Stock Exchange. ADM is one of the world's leading processors of corn, soybeans, wheat, and cocoa. Major products produced by its corn processing division include high fructose corn syrup ("HFCS") and ethanol. HFCS is a liquid sweetener used in a wide variety of foods and beverages. ADM maintains vertically integrated sourcing, processing, transportation, and distribution capabilities for HFCS and other products in the United States, Mexico, and elsewhere around the world.

Staley is incorporated under the laws of the state of Delaware and is headquartered in Decatur, Illinois. Staley is an indirect wholly owned subsidiary of a British corporation, Tate & Lyle PLC. Staley is a corn wet milling company that produces a variety of sweeteners for the food and beverage industry, including HFCS, other sweeteners, starches, ethanol, and animal feeds at four U.S. production plants. Like ADM, Staley distributes its products in the U.S., Mexico, and worldwide.

ALMEX is a joint venture of ADM and Staley. The joint venture was established in May 1993. ADM, through a wholly owned Mexican subsidiary called ADM Controladora, S.A. de C.V., and Staley each own 50 percent of the shares of ALMEX. ALMEX is incorporated in the state of Jalisco. ALMEX's Board of Directors consists of four individuals. ADM and Staley each appoint two directors. The directors make decisions, such as the selection of ALMEX's senior management and the making of additional investments, through consensus.

ADM produced HFCS in three U.S. manufacturing facilities located in Decatur, Illinois and Cedar Rapids and Clinton, Iowa. Staley produced HFCS in its U.S. manufacturing facilities located in Decatur, Illinois, Lafayette, Indiana, and Loudon, Tennessee. All of these facilities produce two types, or concentrations, of HFCS: HFCS-42 and HFCS-90. HFCS-42 and HFCS-90 are blended to make HFCS-55. Except where the context indicates otherwise, as used herein, the term "HFCS" refers to all three types of HFCS. HFCS-55 contains 55 percent fructose, 42

percent dextrose, and 3 percent other saccharides. HFCS-42 contains 42 percent fructose, 53 percent dextrose, and 5 percent other saccharides. As noted above, HFCS is used primarily as sweetener in beverages, processed foods, preserves, confectioneries, bakery products, and dair products.

ADM and Staley have historically shipped a portion of the HFCS produced in their U.S facilities to ALMEX in Mexico. ALMEX owns and operates storage, transportation and distribution facilities in Mexico and has sold ADM's and Staley's HFCS-42 and HFCS-55 to unrelated customers located in Mexico. ADM and Staley are the only suppliers of U.S. origin HFCS to ALMEX. ADM and Staley began exporting HFCS to ALMEX in January 1994 and January 1993, respectively. ADM continued to export in every year since then until ceasing exports in June 2002 due to the actions of the Mexican government complained of herein. Staley's exports of HFCS to ALMEX ceased in October 1997 due to Mexico's issuance of an antidumping order on HFCS that both the World Trade Organization and a NAFTA binational panel later ruled to be illegal. After revocation of this order, Staley was unable to resume exports to ALMEX due to the actions of the Mexican government complained of herein.

ALMEX also produced HFCS-42 and blended HFCS-55 in its own corn wet milling facility in Guadalajara, which began operating in December 1995. ALMEX uses corn imported from the United States, as well as corn grown in Mexico, to produce HFCS. ALMEX sells and distributes its own HFCS to the same customers to which it sells and distributes HFCS that it imports from ADM and Staley. ADM's and Staley's combined investment in ALMEX's HFCS manufacturing, storage, distribution and related facilities exceeds $55 million.

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. No Mexican investor holds an interest in a Mexico-based HFCS production facility.

HFCS and sugar are highly interchangeable. Mexico has a large sugar industry, including numerous sugar mills that are owned by the government of Mexico. Both private and government-owned sugar mills in Mexico purchase sugar cane from Mexican cane growers and process it into standard sugar and refined sugar for consumption in food and beverages. Since ADM, Staley, and other U.S. companies began exporting HFCS from the U.S. to Mexico and, later, began producing HFCS in Mexico for consumption in Mexico, they have gained sales at the expense of Mexican sugar refiners because HFCS, while almost completely interchangeable with sugar, sells for a lower price than the equivalent amount of sugar needed as a sweetener in any particular product. Mexican bottlers of soft drinks, for example, shifted rapidly from sugar to HFCS-55 once HFCS became available from U.S. and Mexican HFCS producers like ADM, Staley, and ALMEX.

The government of Mexico has engaged in a number of unlawful actions designed to interfere with the production and sale of HFCS in Mexico by ADM, Staley, and ALMEX.

- On February 21, 1997, at the request of the Mexican sugar industry, the government of Mexico initiated an antidumping investigation of HFCS imported into Mexico from the United States. A preliminary order announcing the imposition of provisional antidumping duties on ADM, Staley, and other U.S. producers was published in the Diario Oficial on June

25, 1997. A final order imposing antidumping duties on all imports of HFCS from the United States was published in the Diario Oficial in January 1998. This order was later declared illegal under the rules of the World Trade Organization by a dispute resolution panel and by the Appellate Body of the WTO (see WT/DS132/RW, dated 22 June 2001, and WT/DS132/AB/RW, dated 22 October 2001), as well as illegal under Mexican law by a dispute resolution panel convened under Chapter 19 of the NAFTA (see Final Decision in "Review of the Final Determination of the Antidumping Investigation on Imports of High Fructose Corn Syrup, Originating from the United States of America," dated August 3, 2001, Case no. MEX-USA-98-1904-01). As a result of the NAFTA panel's decision, the government of Mexico revoked its antidumping order and refunded all antidumping duties that it had previously collected from ALMEX. However, during the effective period of this order, ADM, Staley and ALMEX incurred substantial damage to their ability to sell HFCS in Mexico.

- In September 1997, the Mexican sugar industry and the Mexican soft drink industry signed a restraint agreement to limit the soft drink bottlers' consumption of HFCS over the next three years. In exchange, the sugar industry agreed to supply the soft drink bottlers with as much sugar as they needed and at discounted prices. The agreement fixed maximum prices for sugar, based on a formula yielding a below market price commitment from the sugar industry. According to Manuel Perez Bonilla, the General Secretary of the National Union of Sugar Cane Producers, the purpose of the agreement was to "stop the imports of fructose . . . ." The Secretary of SECOFI at the time, Herminio Blanco, publicly confirmed the existence of the restraint agreement and expressed his government's support for it. On September 9, 1997, the day on which the agreement was signed, Secretary Blanco was quoted in El Financiero as saying, "That is an agreement among private parties; certainly the fact that the production chains understand that buying more Mexican-produced goods will create more added value in the country is something that we applaud and certainly we feel satisfied by this agreement reached by the soft drink bottlers and sugar producers." The agreement was a restraint of trade that the Mexican government endorsed.

- The Mexican government, beginning in 1997, breached its April 1994 written agreement with ALMEX authorizing duty free access to 100 percent of ALMEX's requirements for imported yellow corn and allowing importation of that corn in a timely manner. As a result, ALMEX imported far less corn than it requested for its corn wet milling facility.

- On December 31, 2001, the Mexican government imposed a requirement that ALMEX obtain permits to import HFCS from the United States, while at the same time failing to publish rules or standards setting forth the criteria for obtaining these permits. Without the required permits, ALMEX's HFCS imports are subject to duties ranging from 156% to 210% ad valorem. Moreover, the Mexican government has denied or delayed granting ALMEX's requests for issuance of HFCS import permits.

- Finally, in April 2002, the Mexican government established a tariff-rate quota for HFCS of 148,000 MT subject to a 1.5% duty. The out of quota duty is 210%. Imports of HFCS from countries other than the U.S., Canada and certain others with special trade agreements, are subject to duties ranging from 156% - 210%.

In 1996, ADM exported approximately 65,000 metric tons ("MT") of HFCS-42 and HFCS-55 to Mexico. By 2001, its annual HFCS exports to Mexico had grown to over 204,000 MT. In 1996, Staley exported approximately 63,500 MT of HFCS-42 and HFCS-55 to Mexico. Staley would have experienced further growth but for the illegal issuance of the antidumping order, which had the effect of precluding further HFCS exports to Mexico until its revocation. Both ADM and Staley expanded their U.S. production capacity for HFCS in anticipation of and reliance upon further increases in their respective sales in Mexico. However, the actions by the Mexican government described above drastically hindered ADM's and Staley's ability to export to Mexico and ALMEX's ability to produce and sell HFCS in competition with Mexican sugar refiners.

E. Factual Basis for ADM's and Staley's Claim

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 or importation of a wide variety of beverages that contained HFCS. The tax was enacted by the Mexican Congress as an amendment to the law called the Special Tax on Products and Services. The tax is imposed on the following beverages containing HFCS: mineral or gasified water; soft drinks; hydrating or re-hydrating drinks; concentrates; powders, syrups, flavor essences or extracts that are diluted to obtain soft drinks; and syrups or concentrates for preparation of soft drinks served in open containers by using automatic, electric, or mechanical devices.

The tax is imposed on producers, bottlers, distributors, and importers of the above-enumerated types of drinks. All drinks that use only cane sugar as a sweetener are specifically exempted from the tax. The tax is imposed on the "sales value" of the entire drink and not on the HFCS content of that drink.

The Parliament Gazette, dated December 30, 2001, stated that the soft drink tax was intended to "protect the [Mexican] sugar industry" by applying the tax "exclusively to beverages which are manufactured with fructose instead of cane sugar."

At a press conference held shortly after the tax took effect, Mexico's then Minister of the Economy, Ernesto Derbez, said that enactment of the tax had been a mistake because it jeopardized foreign investment. The Mexican Supreme Court has held that the Congress enacted the tax with the intent to protect the Mexican sugar industry. It further found that the tax in fact discriminated against HFCS, but that the protection of the Mexican sugar industry constituted a higher constitutional obligation.

Immediately after the tax took effect on January 1, 2002, Mexican producers of beverages subject to the new tax switched back to sugar. Given that 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. Thus, the tax had no revenue raising goal; instead, it operated solely to preclude the use of HFCS in the enumerated beverages.

The Mexican President temporarily suspended the tax on March 5, 2002 until September 30, 2002, but Mexican soft drink producers did not switch back to HFCS due to the uncertainty associated with the status of the tax. On July 12, 2002, the Mexican Supreme Court annulled the

temporary suspension of the tax. The tax was effectively reinstated on July 16, 2002. Under Mexican law, the Mexican Congress has to renew existing taxes for each calendar year. On December 10, 2002, the Mexican Congress formally renewed the tax on HFCS, effective January 1, 2003, for calendar year 2003.

The effect of the new tax was to terminate the use of HFCS-55 in the beverage business in Mexico beginning in 2002. ADM's exports of HFCS-55 to Mexico for resale by ALMEX dropped to 16,777 MT in 2002, compared to 204,187 MT in 2001. Staley, after revocation of the antidumping order at the end of 2001, was unable to resume HFCS exports to ALMEX in 2002. Moreover, ALMEX's production of HFCS-55 dropped in 2002 to 422 MT, compared to 10,166 MT in 2001. ADM and Staley have exported no HFCS-55 to Mexico in 2003. Similarly, ALMEX has produced no HFCS-55 in 2003. In addition, the inability of ADM and Staley to sell a significant percentage of their HFCS production to ALMEX has adversely affected their investments and operations in the United States that rely on ALMEX as an outlet for HFCS production.

The new tax also had devastating effects on ALMEX's production of HFCS-42. ALMEX produced 186,451 MT of HFCS-42 in 2001. In 2002, its HFCS-42 production declined to 157,531 MT. In the first five months of 2003, ALMEX has produced only 55,235 MT of HFCS-42. HFCS-42 can be blended with HFCS-90 to produce HFCS-55, but the soft drink tax has destroyed ALMEX's ability to conduct such blending operations.

F. Jurisdiction

An arbitration tribunal constituted under Chapter Eleven of NAFTA has jurisdiction over this dispute. Claimants ADM and Staley, as companies incorporated in the United States, are investors of a Party under Article 1139 of NAFTA. ALMEX is an enterprise as defined in Article 201 of NAFTA and an investment of an investor of a Party within the terms of Article 1139. Mexico has consented to submit this dispute to arbitration under Article 1122 of NAFTA.

G. Issues Raised by ADM's and Staley's Claim

1. National Treatment

Article 1102 requires that Mexico accord to investors of another Party and their investments treatment no less favorable than that it accords, in like circumstances, to its own investors and their investments. Under Article 1102, Mexico is obligated, among other things, to accord ADM and Staley and their investment, ALMEX, treatment no less favorable than it accords, in like circumstances, to its own sugar refineries.

The Mexican government has previously found that sugar is "like" HFCS. Therefore, sugar producers and HFCS producers are in "like circumstances." Specifically, in the final antidumping order that it issued in January 1998, Mexico's Ministry of Trade and Industrial Development found, at paragraphs 109-114 and 329-426, that HFCS and sugar are similar products with similar characteristics. Moreover, in that same resolution, the Ministry ruled that ALMEX belonged to the same domestic industry as the Mexican sugar refiners.

Quite apart from the government of Mexico's own findings in the context of an antidumping proceeding, there is no question that Mexican sugar refineries and Mexican HFCS

facilities are indeed in "like circumstances" for purposes of Chapter Eleven of NAFTA, as are investors in those respective facilities. Sugar and HFCS are not identical, but they are commercially interchangeable. For this reason, Mexican soft drink producers have shifted back and forth between sources of supply depending on their relative cost and availability. For example, sugar and HFCS have similar physical compositions, characteristics (including solubility in water), functional properties, nutritional properties, sweetening power, flavor, applications, and channels of distribution. Publicly available information concerning the profitability of certain Mexican sugar refiners indicates dramatic increases in profitability since enactment of the soft drink tax, thereby indicating vastly increased use of sugar in soft drinks arising from that tax.

Mexico's soft drink tax illegally discriminates between sugar and HFCS producers. As such, it provides less favorable treatment under Article 1102 to investors and investments in HFCS production and related facilities. This is because soft drink manufacturers have no economic choice but to purchase sugar, rather than HFCS, since the soft drinks that they produce would attract a 20 percent tax if they contained HFCS. For this reason, Mexico's soft drink producers have stopped buying HFCS and are relying completely on sugar even though, as noted above, ADM, Staley, and ALMEX had made considerable and rapidly increasing sales of HFCS in Mexico until 2002. Moreover, the Mexican soft drink market was projected to grow into at least a 3 million MT HFCS market annually.

The Mexican government was well aware when it enacted the tax that the only HFCS available was: (a) that produced in the U.S. and distributed by the Mexican investments of U.S. investors; and (b) that produced in Mexico by the investments of U.S. investors and distributed by those investments. 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.

The soft drink tax constitutes a blatant *de jure and de facto* discrimination in favor of Mexican sugar producers and against U.S. HFCS manufacturers, which has resulted in cessation of the sales by ALMEX of the HFCS-55 it produces itself and the HFCS it imports from ADM and Staley. ALMEX's HFCS-42 production has also declined substantially as a result of the tax. In addition, as noted above, the tax has adversely affected the investors' U.S. investments and operations that are premised upon a reliable and increasing sales outlet in Mexico through ALMEX. Accordingly, the tax violates the national treatment obligation in Article 1102.

2. Performance Requirements

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 of 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."

Because the soft drink tax favors soft drinks containing sugar purchased from Mexican sugar producers, it is in fact a domestic content requirement on domestic beverage producers. The measure conditions receipt of an advantage, in the form of an exemption from the tax, on the use of sugar rather than HFCS. Moreover, it affords a preference to sugar produced and sold in

Mexico over HFCS-55 produced in the United States and Mexico, as well as over HFCS-42 that ALMEX produces in Mexico.

3. Expropriation

Under Article 1110, Mexico may not "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.

The Mexican government's enactment of the soft drink tax, originally effective on January 1, 2002, terminated the ability of ADM, Staley, and ALMEX to sell their respective output of HFCS to customers in Mexico using ALMEX's production facilities, storage and distribution system and marketing expertise. This resulted in a substantial deprivation of the value of ADM's and Staley's investment and interference with their use and enjoyment of the investment. The Mexican government's measure is, therefore, "a measure tantamount to . . . an expropriation" of ADM's and Staley's investment under Article 1110(1). Article 201 of the NAFTA defines the term "measure" to include "any law, regulation, procedure [or] requirement." Moreover, the government of Mexico knew that the soft drink tax would substantially interfere with ADM's, Staley's, and ALMEX's HFCS operations in Mexico and intended that the tax achieve this result.

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 Notice of Intent, 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.

H. The Relief Sought and Approximate Amount of Damages that ADM and Staley Claim on Their Own Behalf and on Behalf of ALMEX

1. Damages in the amount of at least $100 million U.S. dollars arising from the government of Mexico's breach of its NAFTA obligations, including lost sales opportunities and lost profits.

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

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

4. 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.

5. Such other and further relief as the arbitral tribunal deems appropriate and just.

I. Service

As provided in Articles 1119 and 1137 and Annex 1137.2, this Notice has been served by hand delivery on the disputing Party at the following address:

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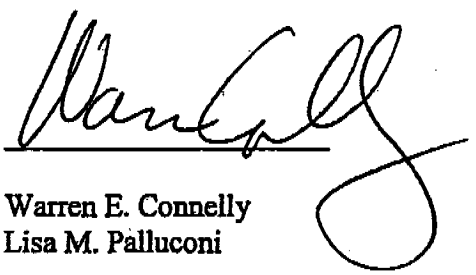
Secretaría de Economía
Avenida de los Insurgentes 1940
Colonia La Florida
01030 Mexico, D.F.

Respectfully submitted,



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Date submitted: October 13, 2003