

Marvin Roy Feldman Karpa
v.
United Mexican States
(ICSID Case No. ARB(AF)/99/1)

Procedural Order No. 4
concerning a request for revision
of Procedural Order No. 3

1. The Tribunal refers to its Procedural Order No. 3 of July 17, 2000, to subsequent correspondence from the Claimant requesting a revision of such Procedural Order, and to the related correspondence from the Respondent. Specifically, the Tribunal has received from the Claimant letters of July 18, 19 and 21, 2000, and has received from the Respondent a letter of July 20, 2000. The Tribunal notes, in addition, that it had received two letters of July 14, 2000, one from each party.

2. The Claimant requests the Tribunal to revise its Procedural Order No. 3 by allowing the production of evidentiary documents and statements to continue as set forth in the Tribunal's Procedural Order No. 2, while proceeding to decide certain issues referenced in Procedural Order No. 3, with the exception of the issue of the Claimant's standing which the Claimant requests to be joined to the merits of the proceeding. In the alternative, the Claimant requests the Tribunal to modify the sequence of written pleadings to be submitted by the parties on the issues referenced in Procedural Order No. 3, as well as to clarify what those issues are. The Respondent does not concur with the foregoing requests by the Claimant.

3. The members of the Tribunal have consulted together on the above-mentioned correspondence from the parties.

4. The Tribunal finds that, as mentioned in its Procedural Order No. 3, certain issues have been raised in this proceeding which go to the scope of the Tribunal's jurisdiction. The Tribunal further finds that it will be useful to consider many of those issues preliminarily, prior to any ruling on the scope of the production of evidentiary documents and statements by the parties, and prior to the parties' written pleadings on the merits. This is understood to be without prejudice to any decision of the Tribunal eventually to join one or more of such issues to the merits of the dispute.

5. Of the above-mentioned issues raised by the parties, the Tribunal wishes to consider the following preliminarily:

- a. Whether the Claimant has submitted a point of claim in this arbitration proceeding concerning an alleged violation of NAFTA Article 1102?
- b. Whether the Claimant may submit additional claims, if any, or amend its claim, on the basis of an alleged violation of NAFTA Article 1102?
- c. Whether the Respondent is entitled to raise any defense on the basis of the time limitation set forth in NAFTA Article 1117(2), and in particular whether such time limitation affects the Tribunal's consideration of facts relevant to the claim or claims, and whether the Respondent is estopped from relying on such time limitation?

- d. Whether measures alleged to be taken by the Respondent in the period between late 1992 and January 1, 1994, when NAFTA came into force, and which are alleged to be in violation of NAFTA, general international law, or domestic Mexican law, are relevant for the support of the claim or claims?
- e. Whether the Claimant, being a citizen of the United States of America, and a registered permanent resident in Mexico, has standing to sue under Chapter Eleven of NAFTA?

6. The Tribunal finds that, as contemplated by its Procedural Order No. 3, the Claimant should first be asked to submit a written pleading on the above-mentioned issues, to be followed by the Respondent. Most of those issues have been placed before the Tribunal by the Claimant. In the light of the existing correspondence on such issues, the Tribunal finds it appropriate for the Claimant to develop those issues and does not deem this to impose a particular hardship on the Claimant. The Tribunal is nevertheless mindful of affording both parties the opportunity of a simultaneous second round of written pleadings on the above-mentioned issues in order to address arguments already made.

7. The Tribunal, accordingly, calls upon the parties to submit written pleadings on the above-mentioned issues as follows:

- a. The Claimant to submit a memorial by Monday, August 21, 2000;

4

- b. The Respondent to submit a counter-memorial by Friday, September 8, 2000; and
- c. Both parties simultaneously to submit any additional observations by Friday, September 22, 2000.

8. In all other respects, the Tribunal's Procedural Order No. 3 remains unchanged. This Order is signed on behalf of the Arbitral Tribunal by its President.



Konstantinos D. Kerameus
President of the Tribunal

August 3, 2000