

INTERNATIONAL CENTRE FOR SETTLEMENT OF
INVESTMENT DISPUTES

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:
GAMI INVESTMENTS, INC., :
:
 Claimant, :
: NAFTA/UNCITRAL
 v. : ARBITRATION
: RULES PROCEEDING
UNITED MEXICAN STATES, :
:
 Respondent. :
:
- - - - -x

Volume I

Wednesday, September 17, 2003

Room H1-200
The World Bank
600 19th Street, N.W.
Washington, D.C.

The hearing in the above-entitled matter
was convened at 9:33 a.m. before:

JAN PAULSSON, President

JULIO LACARTE MURO

MICHAEL REISMAN

ZACHARY DOUGLAS, Secretary

The Government of Mexico has already submitted the meaning of Article 1101 as to the terms in Spanish of the version in Spanish as well as to the version in English of the English version.

Now, both of these versions are equally authentic, at least insofar as to the subject matter we have now before us. We do not see any difference between one version and the other. And I must say that Mexico is in agreement with the different definition of the term "relative," which has been submitted by both parties in this procedure, both the definition in English for the term in English as well as for the definitions in Spanish for the term in Spanish.

Mexico argues that the definition of "relative to" in either language denotes a nexus or a nexus that is closer than the term "affects." We have already made reference to the definition suggested by Maria Moliner in her "Dictionary on Spanish Usage." She says "concerning," "referring to," "touching on," under paragraph 8 of our Rejoinder. Or if we look at the Webster's definition in English, it means "a logical link between or be in relationship with," and we do not dispute other definitions that have been proffered. The meaning is the same.

Now, Mexico also argues that the Tribunal in *Methanex v. U.S.* established correctly that the term "relative" requires a legally significant connection between the measure claimed and the investor or the investment in question. The position of Mexico in the sense that this legally significant nexus is required between the investor and the investment is necessary so that Chapter 11 be applicable and is consistent with the obligations of the chapter.

If we review Articles 1102, National Treatment, 1103, Most Favored Nation Treatment, 1104, Minimum Level, and 1105, which is Minimum Treatment under International Law, all of these provisions are standards for treatment, and they refer to the standard to the investor or the investment. And the Government of Mexico maintains that any measure which is considered to be treatment to the investor or the investment must have a legally significant link with one or the other.

Articles 1105, Performance Requirements, 1107, Senior Management and Boards of Directors, and 1109, Transfers, deal with measures that manifest a legally significant link with the corporate rules for corporations. 1110 refers to direct expropriation and indirect expropriation or equivalent measures, and it also requires a legally significant nexus with the investment in order to be established.

In other words, the Tribunal may note that the terminology used in the substantive obligations of the chapter inform the interpretation of the term "relative to" under Article 1101. Sufficient nexus is required between the measure claimed and the investor or the investment.

The problem for GAMI is that it has not identified a measure that has this legally significant nexus with it or with its shares. What is true is that the Government of Mexico has not adopted nor has it maintained nor does it maintain a measure that refers to the legal interest of GAMI protected by the Treaty, that is, the rights that GAMI has and that derive from its quality as a legal shareholder.

We must not lose sight of the fact that GAMI is a shareholder of GAM. However, the rules under the sugar sector, as we've seen, both expropriation as well as management as well as implementation of the legal provisions on sugar, apply to the sugar mills and to the sugar producers. And these are not related in any way to the shareholders of the mills nor their legal interests as shareholders, and even less so with the shareholders of the shareholders of the sugar mills.