

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES
WASHINGTON, D.C.

**RECTIFICATION OF THE DECISION ON ANNULMENT
OF THE *AD HOC* COMMITTEE**

ICSID Case No. ARB/03/4 – Rectification Proceeding

Industria Nacional de Alimentos, S.A. and Indalsa Perú, S.A.

v.

The Republic of Peru

before the *ad hoc* Committee composed of:

Justice Hans Danelius, *President*
Sir Franklin Berman, *Member of the Committee*
Prof. Andrea Giardina, *Member of the Committee*

Date of dispatch to the parties: 30 November 2007

THE *AD HOC* COMMITTEE

Composed as above,

After deliberation,

Makes the following decision:

1. On 24 December 2002, arbitration proceedings were instituted under the Convention on the Settlement of Investment Disputes between States and Nationals of other States in respect to a dispute between Industria Nacional de Alimentos, S.A. (then known as Empresas Lucchetti, S.A.) and Indalsa Perú, S.A. (then known as Lucchetti Perú, S.A.). The Arbitral Tribunal, constituted on 1 August 2003, rendered its Award on 7 February 2005. On 1 July 2005, the Secretary-General of ICSID registered an application for annulment of the Award submitted by the Claimants. On 17 November 2005, the *ad hoc* Committee was constituted. On 5 September 2007, the *ad hoc* Committee rendered its Decision on Annulment by a majority of the Committee Members; Sir Franklin Berman rendered a dissenting opinion.

2. On 11 October 2007, Judge Stephen M. Schwebel, co-counsel for the Republic of Peru, submitted, on behalf of the Republic of Peru, a Request for rectification of the Decision of the *ad hoc* Committee dated 5 September 2007 (the “Decision”), pursuant to Article 49(2) of the ICSID Convention and Rule 49 of the ICSID Arbitration Rules.

3. This Request related to a single error in the Decision. According to the Respondent, the error consisted of the misstatement on page 3 of the Decision of the affiliation of Judge Schwebel, co-counsel for the Respondent. The Decision refers to “The Republic of Peru, represented by Mr. Miguel Talavera and Mr. Renzo Villa (Embassy of Peru in Washington D.C.), and Judge Stephen Schwebel, Mr. Daniel M. Price, Mr. Stanimir A. Alexandrov, Mr. Nicolás Lloreda, Ms. Sharon H. Yuan and Mr. Michael Smart (Sidley Austin).” However, Judge Schwebel submitted that, as a representative of the Republic of Peru, he acted independently and not as a member of the Sidley Austin legal team. Judge Schwebel thus requested that the passage in question be corrected so as to read: “The Republic of Peru, represented by Mr. Miguel Talavera and Mr. Renzo Villa (Embassy of Peru in Washington, D.C.); Judge Stephen M.

Schwebel of Washington, D.C.; and Mr. Daniel M. Price, Mr. Stanimir A. Alexandrov, Mr. Nicolás Lloreda, Ms. Sharon H. Yuan and Mr. Michael J. Smart (Sidley Austin).”

4. On 15 October 2007 the Secretary-General registered the Request, pursuant to ICSID Arbitration Rule 49(2)(a). On the same date, the Secretary-General, in accordance with ICSID Arbitration Rule 49(2)(b), notified the parties of the registration of the Request and, in accordance with ICSID Arbitration Rule 49(2)(c) and (d), transmitted copies of the Request to the Claimants and to the members of the *ad hoc* Committee.

5. By an electronic mail, dated 15 October 2007, counsel for the Claimants indicated that the Claimants had no objection to the rectification requested by the Respondent.

6. The *ad hoc* Committee has taken note of Peru’s Request for Rectification and of the Claimants’ lack of objections thereof. In accordance with ICSID Arbitration Rule 49(3), the members of the *ad hoc* Committee have agreed that it would not be necessary for them to meet in order to consider the Request.

7. The *ad hoc* Committee has taken into consideration Article 49(2) of the ICSID Convention, in accordance with which the Request is made, which reads, in pertinent part:

“The Tribunal upon the request of a party made within 45 days after the date on which the award was rendered may after notice to the other party decide any question which it had omitted to decide in the award, and shall rectify any clerical, arithmetical or similar error in the award. Its decision shall become part of the award and shall be notified to the parties in the same manner as the award. (...)”

8. Having considered Peru’s Request and the Claimants’ lack of objections, the *ad hoc* Committee unanimously decides to grant the Request for Rectification, thereby amending the third paragraph (“Respondent”) of page 3 of the Decision on Annulment of 5 September 2007 which shall read as follows:

Respondent: *The Republic of Peru, represented by Mr. Miguel Talavera and Mr. Renzo Villa (Embassy of Peru in Washington, D.C.); Judge Stephen M. Schwebel of*

Washington, D.C.; and Mr. Daniel M. Price², Mr. Stanimir A. Alexandrov, Mr. Nicolás Lloreda, Ms. Sharon H. Yuan and Mr. Michael J. Smart (Sidley Austin).”

9. For the purpose of ICSID Arbitration Rule 49(4) in connection with the matters indicated in Arbitration Rule 47(1)(a-g), and in accordance with Article 49(2) of the ICSID Convention, the present decision refers to the terms of the Decision on Annulment dated 5 September 2007 and constitutes an integral part of it.

So decided.

[Signed]

Sir Franklin Berman, Q.C.

Date: [13 November 2007]

[Signed]

Professor Andrea Giardina

Date: [21 November 2007]

[Signed]

Justice Hans Danelius

Date: [3 November 2007]

² Counsel of record until 9 July 2007.