

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

CAMPOS DE PESÉ, S.A.

Claimant

and

THE REPUBLIC OF PANAMA

Respondent

ICSID Case No. ARB/20/19

DECISION ON THE REQUEST FOR THE RECTIFICATION OF THE AWARD

Members of the Tribunal

Mr. Eduardo Zuleta, President
Mr. Horacio Grigera-Naón, Arbitrator
Prof. Brigitte Stern, Arbitrator

Secretary of the Tribunal

Mr. Gonzalo Flores

Assistant to the President of the Tribunal

Ms. María Marulanda-Mürle

Date: 12 September 2024

I. Background

1. On 1 March 2024, the Tribunal composed of Eduardo Zuleta (President), Horacio Grigera (Co-arbitrator) and Brigitte Stern (Co-arbitrator) rendered its award (the “**Award**”) in the matter between Campos de Pesé S.A. (“**Claimant**”) and the Republic of Panama (“**Respondent**”) in ICSID Case No. ARB/20/19. That same day, ICSID’s Secretary-General dispatched a certified copy of the Award to both Claimant and Respondent (jointly the “**parties**”).
2. On 12 April 2024, by way of a letter addressed to ICSID’s Secretary-General, Claimant submitted a request for the rectification of the Award (the “**Rectification Request**”) pursuant to Article 49 of the ICSID Convention and ICSD Arbitration Rule 49 (2006). The Rectification Request was accompanied by “Annex A” containing correspondence between 2 March to 19 March 2024, and a copy of the Award labeled as “Annex B. ICSID”. On the same day, ICSID received payment of the prescribed lodging fee.
3. Under the Rectification Request, Claimant sought the adjustment of clerical errors, which it divided into three sections: Section I “Typographical Errors”, Section II “Mis-citations” and Section III “Other Errors”. In the Rectification Request, Claimant also “attached proposed redactions to the public version of the award” as Section IV.¹
4. On 16 April 2024, ICSID’s Secretary-General registered the Rectification Request and, following Arbitration Rule 49(2)(c) and (d), transmitted a copy of the Rectification Request to Respondent, and each Member of the Tribunal.
5. On 10 May 2024, Respondent commented on two items in Section II, and one item in Section III of the Rectification Request. Respondent had no comments on Section I of the Rectification Request. Further, Respondent objected to Claimant’s request for redactions alleging that “the Tribunal should protect and maintain the Parties’ agreement on the publication of the Award, as set forth in Section 23.1 of the Tribunal’s Procedural Order No. 1.”²
6. On 1 July 2024, the Tribunal issued Procedural Order No. 7, stating that, before deciding on the Rectification Request, it would invite the parties to “confer and seek agreement on limited redactions that avoid the unnecessary disclosure of personal information of individuals who were not involved in the arbitration, neither as Parties not as witnesses...”.
7. After requesting and receiving several extensions from the Tribunal to agree on the redactions to the Award, the parties informed the Tribunal of their agreement on the redactions on 19 July 2024.
8. On 20 July 2024, the Tribunal confirmed the parties’ agreement on the redactions and informed them that the ICSID Secretariat would proceed to implement them.
9. On 23 July 2024, ICSID circulated the redacted version of the Award, informing the parties that unless any objections were raised within 3 calendar days, the redacted Award would be published

¹ Rectification Request, 12 April 2024, pp.1, 7-8.

² Respondent’s Comments on the Rectification Request, 10 May 2024, p. 2.

on its website. No objections were received and the Award, as redacted, was posted on ICSID's website as agreed.

10. Since the request made under Section IV of the Rectification Request has been settled, the Tribunal will now proceed to address Sections I, II, and III.

II. The Tribunal's Analysis

11. Section I of the Rectification Request details specific typographical errors. Respondent had no comments on Section I of the Rectification Request. The typographical corrections identified by Claimant will be deemed incorporated into the Award.³
12. Sections II and III address certain "mis-citations" and other clerical errors. Respondent does not oppose Claimant's request to correct these alleged errors as suggested, except for the incorporation of paragraphs 13-18 of Mr. Barrios' witness statement in footnote 6 of paragraph 48 of the Award (Section II, request 5). In addition, Respondent proposed an alternative adjustment to footnote 211 of paragraph 179 (Section II, request 4), and an additional reference in footnote 207 of paragraph 171 for "completeness" (Section III, request 3).
13. Having reviewed the requests under Sections II and III of the Rectification Request, and absent any objections or comments by Respondent on such requests,⁴ the Tribunal adopts the following corrections of clerical errors and modifications of citations identified by Claimant in Section II (requests Nos. 1, 2, and 3), and Section III (requests Nos. 1 and 2):

- i. **Section II, request 1, concerning paragraph 113, footnote 131 of the Award:**⁵ Paragraph 113 of the Award merely summarizes Claimant's submission made in paragraphs 48 to 53 of section III.B.1.a. of Claimant's Counter-Memorial on Respondent's Objection to Jurisdiction dated 22 February 2022 ("**Counter-Memorial**"). For clarity and completeness, the Tribunal decides that reference to paragraphs 50-51 of the Counter-Memorial shall be included in footnote 131. Since paragraphs 50 and 51 of the Counter-Memorial reiterate the argument made in paragraph 175 of Claimant's Memorial on Jurisdiction and the Merits dated 5 May 2021 ("**Memorial**"), the Tribunal finds no need to reference paragraph 175 of the Memorial in footnote 131 of the Award.
- ii. **Section II, request 2, concerning paragraph 117, footnote 143 of the Award:**⁶ Paragraph 117 of the Award merely summarizes Claimant's submission made in paragraphs 91 to 96 of section III.C.1. of the Counter-Memorial, which includes paragraphs 91-92 of the Counter-Memorial. Nevertheless, the Tribunal has no opposition to citing paragraphs 91-93 instead of paragraphs 91-92. Footnote 143 of the Award shall be adjusted accordingly.

Paragraph 188 of Claimant's Memorial touches on the issue summarized in paragraph 117 of the Award but in broader terms. Also, paragraph 117 of the Award summarizes

³ Rectification Request, 12 April 2024, pp. 1-4. Claimant identified typographical errors in the following paragraphs: ¶ 63 (include "of" in the sentence "Two *of* Campos de Pese's workers"); ¶ 93 (change ██████ for ██████); ¶ 94 (include "a" in the sentence "she conceded in *a* sworn declaration"); ¶¶ 125-126 (change ██████ for ██████); ¶ 153, (change "form of control" for "forms of control").

⁴ Respondent's Comments on the Rectification Request, 10 May 2024, p. 2.

⁵ Rectification Request, 12 April 2024, p. 4, ¶ 1.

⁶ Rectification Request, 12 April 2024, p. 5, ¶ 2.

Claimant's submissions in response to Respondent's objections to jurisdiction. The additional reference to paragraph 188 of that pleading in footnote 143 of the Award seems unnecessary.

- iii. **Section II, request 3, concerning paragraph 199, footnote 223 of the Award:**⁷ Footnote 223 of the Award shall be corrected to cite Claimant's Rejoinder on Jurisdiction dated 28 April 2023 ("**Claimant's Rejoinder**") at paragraph 20.
- iv. **Section III, request 1, concerning paragraph 41 of the Award:**⁸ Paragraph 41 of the Award shall be adjusted to reflect the accurate list of participants at the Hearing.
- v. **Section III, request 2, concerning paragraph 170:**⁹ While no errors have been identified, paragraph 170 of the Award shall be revised as follows to clarify that the document submitted with Claimant's Rejoinder was specifically Mr. Newton's Second Legal Opinion:

"170. The Tribunal recalls that the "First Expert Opinion" of Mr. Newton was submitted with Claimant's Counter-Memorial, and that the "Second Legal Opinion" of Mr. Newton was submitted with Claimant's Rejoinder, together with the portions of the trust agreements that Claimant initially claimed were confidential, and therefore, Mr. Mark Forte, the expert of Respondent, was granted during the Hearing the opportunity to present his comments, and conclusions on Mr. Newton's legal expert opinions."

14. With respect to Claimant's requests that were met with objections or comments from Respondent, the Tribunal notes as follows:

- i. **Section II, request 4, concerning the chart in paragraph 179 of the Award:**¹⁰ the Tribunal finds no error. The chart in the Award was made based on the information provided by the experts in their reports, and the graphic explanation provided by Mr. Lindley at the Hearing¹¹ when commenting on Mr. Mander's opinion and documents.¹² The Award does not suggest that the chart was prepared by Claimant or its experts but that the structure of [REDACTED] reflected in the chart summarizes the information provided by the parties and their experts, Mr. Lindley and Mr. Mander. Notably, Claimant does not object to the information

⁷ Rectification Request, 12 April 2024, p. 5, ¶ 3.

⁸ Rectification Request, 12 April 2024, p. 7, ¶ 1.

⁹ Rectification Request, 12 April 2024, p. 7, ¶ 2.

¹⁰ Rectification Request, 12 April 2024, p. 6, ¶ 4.

¹¹ Transcript Hearing 20 June 2023, 208:17-22-209:1-12, Lindley's presentation: "This is the Organizational Chart that I mentioned with regard to the [REDACTED] and just to quickly walk you through it, if we start at the bottom on the left hand side, we've got [REDACTED]

[REDACTED] of which Mr. Pellas was [REDACTED] and there are [REDACTED] again, if we got right hand side, top triangle, another [REDACTED] which is a [REDACTED] and Mr. Pellas was [REDACTED]

¹² See Transcript Hearing 20 June 2023, 208:10-16: Lindley's presentation: "I've reviewed the Expert Opinion dated 27 April 2023 of Henry Mander, including the documents exhibited thereto, the Mander Opinion. This summary presentation summarizes certain points raised in the Lindley Opinion and having had the opportunity to review the Mander Opinion and the documents referred to and exhibited therein."

reflected therein. However, in the interest of clarity, the last sentence of paragraph 179 of the Award shall be modified to remove the phrase “according to Claimant”, and, as Respondent proposes, a reference to Claimant’s Rejoinder, Figures 1–4, shall be incorporated in footnote 211 of the Award.

- ii. **Section II, request 5, concerning paragraph 48, footnote 6 of the Award:**¹³ The Tribunal finds no error and sees no grounds for adjustment. Paragraph 48 of the Award reflects Claimant’s position in paragraphs 18 to 20 of its Memorial, which includes the reference to Mr. González’s witness statement. Footnote 6 in paragraph 48 of the Award cites Mr. González’s witness statement for the proposition that “the company bought the refined sugar back as the raw material required for the production and sale of alcohol”, as does paragraph 20 of Claimant’s Memorial, which refers to the company’s activities in 2009.¹⁴ In addition, as Respondent rightly notes, Mr. Berrios’s witness statement refers to information on the company’s corporate structure in 2009, which is not the focus of paragraph 48 of the Award. Therefore, no correction is required.
- iii. **Section III, request 3, concerning paragraph 171 of the Award:**¹⁵ This is a clerical error. The word “redirect” shall be changed to “direct”, and Respondent’s additional reference to the hearing transcript (“Transcript Hearing 20 June 2023, 157-174) shall be incorporated in footnote 207 for completeness.

III. Decision

15. For the reasons set out in the previous section, the Tribunal:

- (i) Accepts the rectification requests set forth therein and orders their incorporation into the Award;
- (ii) Denies all other rectification requests;
- (iii) Orders each party to bear its own legal costs and expenses related to the Rectification Request;
- (iv) Orders that the fees and expenses of the Tribunal members, as well as the administrative costs of ICSID, be paid equally by the parties.

¹³ Rectification Request, 12 April 2024, p. 6, ¶ 5.

¹⁴ Memorial, ¶ 20, referring to the year 2009 as stated in ¶ 18:

“18. **In 2009**, based on this investment experience in Panama and because Panama had a growing economy, SER sought to expand its alcohol and liquor business in Panama. To do this, SER negotiated with Rafael Gonzalez and Henry Arosemena to acquire 50% of the issued shares of four companies that were owned by them: (1) Campos de Pesé, which focused on agricultural operations; (2) Alcoholes del Istmo S.A. (“Alcoholes del Istmo”), which sold alcohol locally; (3) Alcoholes del Istmo Internacional, S.A., which sold alcohol internationally and (4) Consorcio Licorero Nacional, S.A., which sold liquors.

19. The parties created a new corporate structure, with a new Panamanian holding company, called Alcoholes del Istmo Holding Company Inc. (“ADI Holding”), to retain the existing four companies as subsidiaries.

20. Following this transaction, Messrs. Gonzalez and Arosemena continued to work for Campos de Pesé as, respectively, the Industrial Director, President and Legal Representative, and the General Manager. **At the time**, Campos de Pesé was predominantly an agricultural business: it planted sugar cane, which it sold to sugar mills, which then refined and sold back to Campos de Pesé the raw material required for the production and sale of alcohol” (emphasis added).

¹⁵ Rectification Request, 12 April 2024, p. 7, ¶ 3.

[Signed]

Mr. Horacio Grigera-Naón
Arbitrator
Date: 12 September 2024

[Signed]

Prof. Brigitte Stern
Arbitrator
Date: 12 September 2024

[Signed]

Mr. Eduardo Zuleta
President of the Tribunal
Date: 12 September 2024