The applicant requests a permit to take (harass by survey) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), the vernal pool fairy shrimp (*Branchinecta lynchi*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species for the purpose of enhancing their survival.

Permit No. TE–063429

Applicant: California Department of Water Resources, Fresno, California.

The applicant requests a permit to take (capture, mark, and release) the Fresno kangaroo rat (*Dipodomys nitratoides exilis*), the giant kangaroo rat (*Dipodomys ingens*), the Tipton's kangaroo rat (*Dipodomys nitratoides nitratoides*), and the Buena Vista Lake shrew (*Sorex ornatus relictus*) in conjunction with surveys in Fresno, Kern, Kings, Madera, Merced, Monterey, San Benito, San Luis, Stanislaus, and Tulare Counties, California, for the purpose of enhancing their survival.

Dated: October 24, 2002.

Rowan W. Gould,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 02–28321 Filed 11–6–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–020–03–7122–DS–64GG]

New Mexico; Notice of Agency and Public Scoping Meetings for the Amendment to the Taos Resource Management Plan and Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Taos Field Office.

ACTION: Taos Resource Management Plan Amendment and Environmental Impact Statement Scoping Meeting schedule for December 2002.

SUMMARY: The following dates, times and locations have been identified for scoping meetings to discuss the Taos Resource Management Plan Amendment and Environmental Impact Statement. The Bureau of Land Management Taos Field Office is considering an amendment to the Taos Resource Management Plan (RMP) to provide for the possible disposal of approximately 160 acres of public land in Rio Arriba County, New Mexico. The land would be used by the North Central Solid Waste Authority for a new regional landfill. The public is invited to provide scoping comments on the issues that should be addressed in the plan amendment and environmental impact statement.

- Agency Scoping Meeting—Wednesday, December 4—at El Convento in Espanola, NM 2 p.m.–4 p.m.
- Public Scoping Meeting 1—Wednesday, December 4—at El Convento in Espanola, NM, 6 p.m.–8 p.m.
- Public Scoping Meeting 2—Thursday, December 5—at the Ojo Caliente Elementary School Cafeteria, Ojo Caliente, NM, 6 p.m.–8 p.m.

For meeting updates please call the BLM—Taos Field office at (505) 751–4709.

FOR FURTHER INFORMATION CONTACT: Lora Yonemoto, Realty Specialist, Bureau of Land Management, Taos Field Office, 226 Cruz Alta Rd., Taos, NM 87571, or call (505) 751–4709.

Dated: November 1, 2002.

Sam DesGeorges,

Assistant Field Office Manager.

[FR Doc. 02–28319 Filed 11–6–02; 8:45 am]

BILLING CODE 4310–FB–U

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–035]

Sunshine Act Meeting

Agency Holding the Meeting: United States International Trade Commission.

Time and Date: November 19, 2002 at 11 a.m.

Place: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

Status: Open to the public.

Matters to Be Considered:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–430 and 731–TA–1019 (Preliminary)(Durum and Hard Red Spring Wheat from Canada)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before November 25, 2002; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before December 3, 2002.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 5, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–28465 Filed 11–5–02; 10:44 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil Case No. 02–1768]

Proposed Final Judgment and Competitive Impact Statement; United States v. Archer-Daniels-Midland Company and Minnesota Corn Processors, LLC

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that a proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Archer-Daniels-Midland Company and Minnesota Corn Processors, LLC,* Civil Case No. 1:02 CV 01768 (JDB). The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

On September 6, 2002, the United States filed a Complaint alleging that the proposed acquisition by Archer-Daniels-Midland Company of Minnesota Corn Processors, LLC would violate section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in the manufacture and sale of corn syrup and high fructose corn syrup (''HFCS'') in the United States and Canada. ADM and MCP are two of the largest corn wet millers in the United States, competing against only four other firms in the manufacture and sale of corn syrup and HFCS. MCP sells these products through an exclusive sales joint venture that it formed in December 2000 with another corn wet miller, Corn Products International, Inc. To preserve competition, the proposed Final Judgment requires the defendants to dissolve the joint venture that MCP formed with CPI by December 31, 2002, thus allowing CPI to compete independently. A Competitive Impact Statement, filed by the United States, describes the Complaint, the proposed Final Judgment, and remedies available to private litigants. Copies of the Complaint, the proposed Final

Judgment, Stipulation and Order, and Competitive Impact Statement are available for inspection at the U.S. Department of Justice, Antitrust Division, Suite 215 North, 325 7th Street, NW., Washington, DC 20530 (telephone: 202/514–2692), and at the Clerk's Office of the U.S. Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

Public comment is invited within 60-days of the date of the notice. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments may be filed with the Department of Justice in either paper or electronic form. Comments filed in paper form should be directed to Roger W. Fones, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 7th Street, NW., Suite 500, Washington, DC 20530 (facsimile 202/307–2784). Comments filed in electronic form should be submitted to the following e-mail address: *ADM–MCP.atr@usdoj.gov.*

Constance K. Robinson,

Director of Operations, Antitrust Division.

Stipulation and Order

It is hereby *stipulated* by and between the undersigned parties, subject to approval and entry by the Court, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedure and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. If the United States has withdrawn its consent, as provided in paragraph 2 above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendants represent that the required actions set forth in Sections IV and V of the proposed Final Judgment can and will be made, and that the defendants will later raise no claims of hardship, or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

Respectfully submitted,

For Plaintiff, United States of America:

Michael P. Haronis,
Pennsylvania State Bar #17994, Attorney, Antitrust Division, U.S. Department of Justice, 325 Seventh St., NW., Suite 500, Washington, DC 20530. Telephone: (202) 307–6357. Facsimile: (202) 307–2784.
Dated: September 6, 2002.

For Defendant,

Archer-Daniels-Midland Company:

David James Smith,
State of Illinois Bar No. 3128392, Vice President, Secretary & General Counsel, 4666 Faries Parkway, Decatur, IL 62526. Telephone: (217) 424–6183. Facsimile: (217) 424–6196.

For Defendant, Minnesota Corn Processors, LLC:

Joseph Bennett,
State of Minnesota Bar No. 0289991, Secretary and General Counsel, Minnesota Corn Processors, LLC, 901 North Highway 59, Marshall, MN 52658. Telephone: (507) 537–2674. Facsimile: (507) 537–2641.

Order

It is *so ordered,* this __ day of _____, 2002.

_____

United States District Court Judge.

Final Judgment

Whereas plaintiff, United States of America, having filed its Complaint herein, plaintiff and defendants, Archer-Daniels-Midland Company (''ADM'') and Minnesota Corn Processors, LLC (''MCP''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact of law;

And whereas, the defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain dissolution of CornProductsMCP Sweeteners LLC (''CPMCP'') is the essence of this agreement;

And whereas, the United States requires defendants to effect the dissolution of CPMCP for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to the United States that they will effect the dissolution of CPMCP as provided in this Final Judgment and that defedants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions on dissolution contained below:

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. ''ADM'' means defendant Archer-Daniels-Midland Company, a corporation organized and existing under the laws of the state of Delaware, with its principal offices in Decatur, Illinois, its successors and assigns, and its parents, subsidiaries, divisions, groups, and their officers, managers, agents, and employees.

B. ''CPI'' means Corn Products International, Inc., a corporation organized and existing under the laws of the state of Delaware, with its principal offices in Bedford Park, Illinois, its successors and assigns, and its parents, subsidiaries, divisions, groups, and their officers, managers, agents, and employees.

C. ''CPMCP'' means CornProductsMCP Sweeteners LLC, a joint venture between CPI and MCP, which serves as the exclusive sales and distribution outlet in the United States, Canada, and Mexico for CPI and MCP in designated product categories, including

corn syrup and high fructose corn syrup.

D. ''MCP'' means defendant Minnesota Corn Processors, LLC, a limited liability company organized and existing under the laws of the state of Colorado, with its principal offices in Marshall, Minnesota, its successors and assigns, and it parents, subsidiaries, divisions, groups, and their officers, managers, agent, and employees.

E. ''Transaction'' means ADM's proposed acquisition of MCP.

III. Applicability

This Final Judgment applies to ADM and MCP, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Dissolution of CPMCP

A. The defendants are hereby ordered and directed to effect the dissolution of CPMCP on or prior to December 31, 2002. Defendants are further ordered and directed to provide to the General Counsel of CPI in its Westchester, Illinois offices written notice of their election to dissolve CPMCP prior to or simultaneously with the closing of the Transaction.

B. On the same day that the defendants provide written notice to CPI's General Counsel, as required pursuant to Section IV(A) of this Final Judgment, the defendants shall in writing relieve CPI, effective immediately, of any and all obligations to defendants or CPMCP to the full extent necessary to permit CPI to conduct independent operations in competition with defendants and CPMCP.

V. Participation by the Defendants in the Operation of CPMCP Prior to the Effective Date of Dissolution

From the date the defendants provide CPI's General Counsel written notice of their election to dissolve CPMCP until the effective date of the dissolution of CPMCP, defendants shall refrain from selling, marketing, or pricing any products in cooperation or coordination with CPMCP or CPI and shall compete independently of CPMCP and CPI. Nothing in this Final Judgment affects or alters any obligations of defendants to facilitate or ensure that CPMCP completes the performance of any existing contracts or commitments to its customers.

VI. Affidavits

Twenty (20) calendar days from the date of the filing of this Final Judgment, and every thirty (30) calendar days thereafter until the final accounting after dissolution of CPMCP has been completed under this Final Judgment, the defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Sections IV and V of this Final Judgment. Assuming that the information set forth in the affidavit is true and complete, any objection by the United States to the information provided by the defendants, including limitations on the information, shall be made within fourteen (14) calendar days of receipt of such affidavit. Unit one year after the defendants have completed the final accounting, the defendants shall maintain full records of the dissolution of CPMCP.

VII. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at plaintiff's option, to require defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX. Public Interest Determination

Entry of this Final Judgment is in the public interest.

X. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

Date:_____

_____

United States District Court Judge

Case Number: 1:02CV02768.
Judge: John D. Bates.
Deck Type: Antitrust.

Competitive Impact Statement

Pursuant to Section 5(b) of the Clayton Act, as amended by Section 2 of the Antitrust Procedures and Penalties Act (codified at 15 U.S.C. 16(b)–(h) (''Tunney Act'')), the United States files this Competitive Impact Statement relating to the Proposed Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On September 6, 2002, the United States of American filed a civil antitrust Complaint alleging that the proposed acquisition by Archer-Daniels-Midland Company (''ADM'') of Minnesota Corn Processors, LLC (''MCP'') would violate Section 7 of the Clayton Act. 15 U.S.C.

18. The Complaint alleges that ADM and MCP are two of the largest corn wet millers in the United States and compete in the manufacture and sale of corn syrup and high fructose corn syrup (''HFCS'') in the United States and Canada. The Complaint further alleges that through its acquisition of MCP, ADM will eliminate this competition and increase concentration in the already highly concentrated corn syrup and HFCS markets, making anticompetitive coordination among the few remaining competitors more likely. The request for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; (2) a permanent injunction preventing consummation of the merger agreement; (3) an award of costs to the plaintiff; and (4) such other relief as the Court may deem just and proper.

When the Complaint was filed, the United States also filed a proposed Final Judgment that would permit ADM's acquisition of MCP, but would preserve competition by requiring, *inter alia*, the defendants to dissolve the marketing and sales joint venture that MCP formed with another corn wet miller, Corn Products International (''CPI'').[1] The defendants are required to provide written notice to CPI of their election to dissolve the joint venture no later than consummation of ADM's acquisition of MCP and to complete the dissolution of the joint venture no later than December 31, 2002. On the same day the defendants give written notice to CPI, the proposed Final Judgment also provides that the defendants are prohibited from selling, marketing, or pricing any products in cooperation or coordination with the joint venture or CPI, and they must notify CPI that it is relieved of all obligations under the joint venture that would prevent it from competing fully with the defendants. The proposed Final Judgment does not affect or alter any obligations of ADM and MCP to perform existing contracts or commitments to its customers.

The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the Tunney Act. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce provisions of the proposed Final Judgment and to punish violations thereof.

[1] The defendants entered into a Stipulation (filed contemporaneously with the Final Judgment) in which they agreed to be bound by the proposed Final Judgment pending final determination of this matter by the Court.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

ADM is a Delaware corporation, with its principal offices located in Decatur, Illinois. ADM is engaged in the processing and sale of agricultural products, including corn syrup and HFCS, which are among the products it produces from corn through the wet milling process at domestic plants in Cedar Rapids Iowa, Clinton, Iowa, and Decatur, Illinois. Its net sales in 2001 were approximately $20 billion. Its sales of corn wet milled products in the United States in 2001 exceeded $1 billion, including HFCS sales of approximately $480 million and corn syrup sales of approximately $66 million.

MCP is a Colorado limited liability company, with its principal offices in Marshall, Minnesota. MCP is an agricultural processing and marketing business that operates corn wet milling facilities in Marshall, Minnesota and Columbus, Nebraska. MCP's net sales in 2001 were approximately $620 million. MCP's 2001 sales of corn wet milled products in the United States totaled approximately $402 million, with HFCS sales of approximately $153 million and corn syrup sales of approximately $56 million.

MCP sells its corn wet milled products through a joint venture that it formed in December 2000 with CPI. The joint venture, known as CornProductsMCP Sweeteners LLC (''CPMCP''), is the exclusive outlet for MCP's and CPI's corn syrup and HFCS products.

On July 11, 2002, ADM and MCP entered into an agreement under which ADM would acquire MCP. This transaction, which would increase concentration in the already highly concentrated corn syrup and HFCS markets precipitated the government's suit.

B. Corn Syrup and High Fructose Corn Syrup Markets

Corn syrup and HFCS are manufactured by wet mill processing of corn. In the wet milling process, corn kernels are first soaked in water, then ground and separated from other components of the kernel, producing a starch slurry. To manufacture corn syrup and HFCS, the corn wet millers add enzymes and/or acid that convert the starch slurry to sugars, such as dextrose and fructose.

Corn syrup is used as a sweetener in the preparation of assorted food products, including confectionery, baker, and dairy products, salad dressing, condiments, jams, and jellies, lunch meats, canned food, and vegetables. Specific applications require different grades of corn syrup with different sweetening effect. The corn wet millers that manufacture corn syrup can and do make most or all the various grades of corn syrup.

There are two grades of HFCS—HFCS 42 and HFCS 55—with the numbers referring to the percentage of fructose in the product. HFCS 42 is used as a sweetener in jam, jellies, baked goods, canned food, diary products, and some beverages. HFCS 55 is used mainly in the soft-drink industry as a substitute for sugar.

There are no realistic substitutes for corn syrup or HFCS to which customers could switch in the event of a small, but significant and non-transitory price increase. Corn syrup in its various grades. HFCS 42, and HFCS 55 are each distinct products without practical substitutes, differing from all other sweeteners and one another in their physical characteristics, means of production, many uses, and pricing. Although sugar is functionally interchangeable with corn syrup, HFCS 42 and HFCS 55 in many applications, it is significantly more expensive.

C. Harm to Competition as a Consequence of the Acquisition

The markets in the United States and Canada for corn syrup, HFCS 42 and HFCS 55 are already highly concentrated. ADM competes against only four other firms in the manufacture and sale of corn syrup, HFCS 42 and HFSCS 55 in the United States or Canada. In these markets, ADM accounts for about 10% of all corn syrup manufacturing capacity, 33% of all HFCS 42 manufacturing capacity, and 25% of all HFCS 55 manufacturing capacity. MCP, in its joint venture with CPI, accounts for more than 20% of all corn syrup manufacturing capacity, more than 15% of all HFCS 42 manufacturing capacity, and more than 15% of all HFCS 55 manufacturing capacity.

If ADM acquires MCP and succeeds to MCP's position in its joint venture with CPI, the markets in the United States and Canada for corn syrup, HFCS 42 and HFCS 55 will become substantially more concentrated. The number of independent competitors will be reduced from five to four, increasing the likelihood of anticompetitive coordination among the few remaining corn wet millers that manufacture and sell corn syrup and HFCS 42 and HFCS 55.

Entry by a new competitor would not be timely or likely to prevent this harm to competition. Successful entry into the manufacture and sale of corn syrup, HFCS 42 and HFCS 55 is difficult time consuming, and costly. Construction of an efficient corn wet milling facility likely would take more than two years from the time of site selection to production of commercial quantities of corn wet milled products.

As the Complaint alleges, the transaction would likely have the following effects, among others: actual competition between the defendants in the corn syrup and HFCS markets will be eliminated; competition generally in the manufacture and sale of corn syrup and HFCS throughout the United States and Canada will lessen substantially; the prices for corn syrup and HFCS will increase; and the amounts of corn syrup and HFCS produced will decrease.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects resulting from ADM's acquisition of MCP and succession to MCP's interest in the joint venture with CPI and to preserve competition in the manufacture and sale of corn syrup and HFCS. The proposed Final Judgment contains three principal forms of relief. First, it requires the defendants to dissolve the joint venture by December 31, 2002. This relief is intended to ensure that the acquisition does not reduce the number of independent competitors in the corn syrup and HFCS markets in the United States and Canada. Prior to the acquisition, there were five competitors and with the dissolution of CPMCP, there will still be five. Second, the proposed Final Judgment also requires that, prior to or simultaneously with the closing of ADM's acquisition of MCP, the defendants must provide CPI written notice of their election to dissolve CPMCP. Upon written notice of their election to dissolve CPMCP, the defendants are additionally required to provide CPI written notice that CPI is permitted to conduct independent operations in competition with the defendants and CPMCP. This relief is intended to ensure that, prior to accomplishment of the dissolution of CPMCP, CPI is permitted to independently market and sell corn syrup and HFCS. Third, the proposed Final Judgment further requires the defendants to complete independently of CPMCP and CPI. The proposed final Judgment does not affect or alter any obligations of ADM and MCP to facilitate or ensure that CPMCP completes the performance of any existing contracts or commitments to its customers.

Thus, the decree will ensure that there are at least five independent competitors in the corn syrup and HFCS markets, and will preserve and encourage ongoing competition between ADM and CPI.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in a federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Tunney Act, provided that the United States has not withdrawn its consent. The Tunney Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Tunney Act provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register. Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the defendants. The United States is satisfied, however, that the dissolution of the joint venture and other relief contained in the proposed Final Judgment will preserve competition in the production and sale of corn syrup and HFCS and that the proposed Final Judgment would achieve all of the relief that the government would have obtained through litigation, but avoids the time and expense of trial. The United States is satisfied that the proposed relief will prevent the acquisition from having anticompetitive effects in this market. The dissolution of the joint venture will preserve the existence of five independent competitors, thus eliminating the likelihood that the acquisition would have facilitated industry coordination.

VII. Standard of Review Under the Tunney Act for Proposed Final Judgment

The Tunney Act requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the Court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the Court of Appeals for the District of Columbia Circuit has held, the Tunney Act permits the Court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are

sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft,* 56 F. 3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [2] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. ¶ 61,508 at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988), quoting United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also Microsoft, 56 F. 3d 1448 (D.C. Cir. 1995). Precedent requires that

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the pubioc in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (citations omitted) (emphasis added).[3]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.''' *United States* v. *American Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted), aff'd sub nom. *Maryland* v. *United States.* 460 U.S. 1001 (1983), quoting Gillette, 406 F. Supp. at 716 [4]

Moreover, the Court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and the Act does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459. Since ''[t]he court's authroity to review the decree depends entirely on the government's exercising its prosecurtorial discretion by bringing a case in the first place,'' it follows that the court ''is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have, but did not, pursue. Id. at 1459–60.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the Tunney Act that were considered by the United States in formulating the proposed Final Judgment.

Dated: September 13, 2002.

Respectfully submitted,

For Plaintiff United States of America:

Michael P. Harmonis,

Pennsylvania Bar No. 17994, Antitrust Division, U.S. Department of Justice, 325 7th Street, NW., Suite 500, Washington, DC 20530, Telephone: (202) 307–6357. Facsimile: (202) 307–2784.

Certificate of Service

I hereby certify that on this 13th day of September, 2002. I have caused a copy of the foregoing United State's Competitive Impact Statement to be served by first class mail, postage prepaid, and by facsimile on counsel for defendants in this matter:

David James Smith,

Vice President, Secretary & General Counsel, Archer-Daniels-Midland Company, 4666 Faries Parkway, Decatur, IL 62526. Telephone: (217) 424–6183. Facsimile: (217) 424–6196. Counsel for Defendant Archer-Danbiels-Midland.

Joseph Bennett,

Secretary and General Counsel, Minnesota Corn Processors, LLC, 901 North Highway 59, Marshall, MN 56258. Telephone: (507) 537–2674. Facsimile: (507) 537–2641. Counsel for Defendant Minnesota Corn Processors, LLC.

Michael P. Harmonis,

Pennsylvania State Bar No. 17994, Attorney, Antitrust Division, U.S. Department of Justice, 325 Seventh St., NW., Suite 500, Washington, DC 20530. Telephone: (202) 307–6357. Facsimile: (202) 307–2784.

Certificate of Service

I hereby certify that on this 13th day of September, 2002, I have caused a copy of the foregoing United State's Competitive Impact Statement to be served by first class mail, postage prepaid, and by facsimile on counsel for defendants in this matter:

David James Smith,

Vice President, Secretary & General Counsel, Archer-Daniels-Midland Company, 4666 Faries Parkway, Decatur, IL 62526. Telephone: (217) 424–6183. Facsimile: (217) 424–6196. Counsel for Defendant Archer-Daniels-Midland.

Joseph Bennett,

Secretary and General Counsel, Minnesota Corn Processors, LLC, 901 North Highway 59, Marshall, MN 56258. Telephone: (507) 537–2674. Facsimile: (507) 537–2641. Counsel for Defendant Minnesota Corn Processors, LLC.

Michael P. Harmonis,

Pennsylvania State Bar No. 17994, Attorney, Antitrust Division, U.S. Department of Justice, 325 Seventh St., NW., Suite 500, Washington, DC 20530. Telephone: (202) 307–6357. Facsimile: (202) 307–2784.

[FR Doc. 02–28333 Filed 11–6–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section

[2] 119 Cong. Rec. 24598 (1973); see also *United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the Tunney Act. Although the Tunney Act authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and and that further proceedings would aid the court in resolving those issues. See H.R. 93–1463, 93d Cong. 2d Sess. 8–9, reprinted i (1974) U.S.C.C.A.N. 6535, 6538.

[3] See also *United States* v. *BNS, Inc.,* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); Gillette, 406 F. Supp. at 716; *United States* v. *American Cyanamid Co.,* 719 F.2d 558, 565 (2d Cir. 1983).

[4] See also *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (w.D. Ky. 1985).