

**BEFORE THE TRIBUNAL IN THE MATTER OF AN ARBITRATION UNDER
CHAPTER ELEVEN OF THE NORTH AMERICAN FREE TRADE AGREEMENT
AND THE ICSID CONVENTION**

Mobil Investment Canada, Inc.

and

Government of Canada

ICSID Case ARB/15/6

SUBMISSION OF MEXICO PURSUANT NAFTA ARTICLE 1128

November 7, 2017

1. The Government of Mexico makes this submission pursuant to Article 1128 of the North American Free Trade Agreement (NAFTA) with respect to a question of interpretation of the NAFTA. Mexico takes no position on the facts of this dispute. The fact that a question of interpretation arising in the proceeding is not addressed in this submission should not be taken to constitute Mexico's concurrence or disagreement with a position taken by either of the disputing parties.
2. On October 2, 2017, the Tribunal asked the following question: Is a breach of the obligation to perform in good faith a breach of an obligation under the NAFTA?
3. Mexico agrees with Canada¹ and the United States² that the principle of good faith contained in Article 26 of the Vienna Convention on the Law of Treaties,³ must be observed in the creation

¹ See, Mobil Investment Canada, Inc. v. Government of Canada, ICSID Case ARB/15/6, Canada's Post-Hearing Submission, at paras. 3 and 5 (Aug 11, 2017) (Canada's Post-Hearing Submission).

² See, Mobil Investment Canada, Inc. v. Government of Canada, ICSID Case ARB/15/6, United States' 1128 Submission, at para. 4 (Oct. 24, 2017) ("US 1128 Submission").

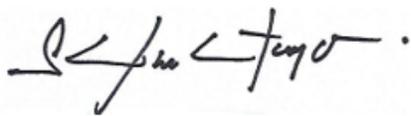
³ See, *Vienna Convention on the Law of Treaties*, Article 26 (*Pacta sunt servanda*) ("Every treaty in force is binding upon the parties to it and must be performed by them in good faith"). 26, May 23, 1969, 1155 U.N.T.S. 1980.

and implementation of legal obligations, but “it is not in itself a source of obligation where none would otherwise exist”.⁴

4. Mexico concurs with Canada that “... there is no separate obligation to perform in good faith in NAFTA Chapter Eleven, a failure to do so cannot be alleged as a breach rising to a dispute under Section B thereof”.⁵ Under NAFTA Chapter Eleven, an investor of a Party may only claim, pursuant to NAFTA Article 1116 or Article 1117, a breach of an obligation in Section A of Chapter Eleven, Article 1503(2) (State Enterprises), or, under specific circumstances, Article 1502(3)(a) (Monopolies and State Enterprises). As the United States asserts, “claims alleging breach of the good faith principle do not fall within the limited jurisdictional grant afforded in Section B.”⁶

5. Finally, Mexico concurs with the United States that under Chapter Eleven “[t]here is no specific treaty obligation under the NAFTA to repeal or cease enforcement of a measure in response to an adverse arbitral award or decision”, and that “NAFTA tribunals have no authority to change domestic law or to require a NAFTA Party or any state or local government to change its laws or decisions”.⁷ NAFTA Article 1135(1) clearly states that a Tribunal may “only” award, separately or in combination: “monetary damages and any applicable interest; restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution” and “costs in accordance with the applicable arbitration rules”.

Respectfully submitted,



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⁴ *Border and Transborder Armed Actions (Nicaragua v. Honduras)*, 1988 I.C.J. 69, 105-106, para. 94 (Dec. 20, 1988). See also, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, 2010 I.C.J. 14, para. 67. (Apr 20, 2010) (“Indeed, according to customary international law, as reflected in Article 26 of the Vienna Convention on the Law of the Treaties, [e]very treaty in force is binding upon the parties to it and must be performed by them in good faith’. That applies to all obligations established by a treaty...”).

⁵ *See*, Canada’s Post-Hearing Submission, at para. 5.

⁶ *See*, US 1128 Submission, at para. 3.

⁷ *See*, US 1128 Submission, at para. 5.