VERSIÓN PÚBLICA

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ADDITIONAL FACILITY RULES

REQUEST FOR THE INSTITUTION OF ARBITRATION PROCEEDINGS

UNDER THE ADDITIONAL FACILITY RULES FOR THE ADMINISTRATION OF PROCEEDINGS BY THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES AND CHAPTER 11 OF THE NORTH AMERICAN FREE TRADE AGREEMENT

VENTO MOTORCYCLES, INC.

Claimant

v.

UNITED MEXICAN STATES

Respondent

REQUEST FOR THE INSTITUTION OF ARBITRATION PROCEEDINGS UNDER THE ADDITIONAL FACILITY MECHANISM FOR THE ADMINISTRATION OF PROCEEDINGS BY THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES AND CHAPTER 11 OF THE NORTH AMERICAN FREE TRADE AGREEMENT

I. REQUEST FOR ARBITRATION

1. The Claimant/Investor hereby submits the following claim to arbitration, on its own behalf and on behalf of its investment enterprises, pursuant to Articles 2 and 3 of the Arbitration Additional Facility Rules of the International Centre for the Settlement of Investment Disputes (hereinafter: "the Arbitration Rules"), Articles 1116 and 1117 of the North American Free Trade Agreement[1] (hereinafter: "NAFTA") and any other applicable provisions under Chapter 11 of NAFTA.

2. Vento Motorcycles, Inc. (hereinafter: "Vento," "Claimant," or "Investor") is a company incorporated and existing under the laws of Texas. Incorporation took place on August 30th, 2001. Claimant's address is:

[redacted]

3. Claimant is represented in all matters relating to this claim by Mr. Luis Felipe Aguilar Rico from Aguilar y Loera, S.C. and Dr. Todd Weiler. A copy of the powers of attorney for co-counsel is attached to this Request for Arbitration as "Exhibit 1". All communications concerning this matter should be directed to the following locations:

Luis Felipe Aguilar Rico, Esq.
Aguilar y Loera, S.C.
[redacted]

Dr. Todd Weiler, Esq.
[redacted]
Todd Weiler, Barrister & Solicitor
[redacted]

[1] The North American Free Trade Agreement entered into force on January 1st, 1994.

4. Respondent is the United Mexican States (hereinafter: "Mexico," "Respondent," "the host State," or "the Government of Mexico." Respondent is represented by the General Directorate of Legal Consultancy for International Trade of the Ministry of Economy. Respondent's address is:

   Dirección General de Consultoría Jurídica de Comercio Internacional
   Paseo de la Reforma 296
   Colonia Benito Juárez
   Delegación Cuauhtémoc
   C.P. 06600
   Ciudad de México
   México

5. The United States of America is a party to the ICSID Convention. Mexico is not a party to the ICSID Convention. Accordingly, the dispute has been submitted under the Additional Facility Rules.

6. Copies of the relevant provisions of the NAFTA, which constitutes the agreement between the parties for purposes of the arbitration, are attached hereto as "Exhibit 3". Claimant submits the dispute to arbitration in accordance with Articles 1116, 1117, 1120, 1121 and 1122 of NAFTA; Respondent, as a party to this Treaty, consents to the submission of this claim to arbitration as set out in Article 1122 of NAFTA.

7. Copies of Claimant's duly-executed waivers and consent to arbitration, undertaken in compliance with NAFTA Articles 1120, 1121, and 1122 are attached hereto as "Exhibit 2".

8. More than six months have elapsed since the events giving rise to the claim occurred, but not more than three years have elapsed since Claimant knew, or ought to have known, of the breaches alleged herein, or the damages arising from them. As such, jurisdiction *ratione temporis* has been satisfied under NAFTA Articles 1116, 1117 and 1120.

9. Claimant served its Notice of Intent to submit the foregoing dispute to arbitration on Respondent on February 20th, 2017. It has been more than ninety days since such submission, in accordance with Article 1119 of NAFTA. A copy of Claimant's notice of intent is attached hereto as "Exhibit 4".

10. The parties' counsel met for consultations in Mexico City on May 17th, 2017, at which point the issue of potential settlement was discussed but no consensus was achieved. Accordingly the parties fulfilled their obligations under Article 1118.

11. The legal dispute between the parties arises directly out of an investment made by Claimant in the territory of Mexico. The investment took the form of a joint venture enterprise pursued with a Mexican company, ***MotorBike, S.A.*** (hereinafter: "MotorBike"). The joint venture's enterprise's business consisted of the sales strategies, commercial intelligence, know-how, intellectual property rights, technical information of the product, training, post-sale servicing, market information, human resources, sales forces and collection services for the commercialization of the products in Mexico of small engine displacement motorcycles manufactured by Vento in Texas – all under the general supervision and control of Vento.

12. Pursuant to Article 3.3 of the Arbitration Rules, this Request is delivered with five additional signed copies. The undersigned Counsel declares that all copies of documents attached as exhibits to this request are copies or certified copies of original documents. In accordance with this provision, this request is accompanied by the fee prescribed pursuant to Regulation 16 of the Administrative and Financial Regulation of the Centre which is attached hereto as "Exhibit 5".

II. FACTS UNDERLYING THE DISPUTE

II.a *The Investment*

13. As noted above, Claimant established its investment in the territory of Mexico under the auspices of a joint venture it concluded with MotorBike, which came into force on October 1st, 2001. A copy of the 2001 joint venture agreement (hereinafter: the "JVA") is attached hereto as "Exhibit 6".

14. The objective of the joint venture was to develop and serve a market for small engine displacement motorcycles in Mexico. In establishing its investment in Mexico, Vento relied on the promise of a North American Free Trade Area, as provided in the NAFTA text. As the moving party in the joint venture, [redacted] the senior and directing partner, and was also entitled to an overwhelming share of the profits generated through the joint venture. In fact, the terms of the JVA expressly accorded discretionary rights of control over [redacted], in order to carry out its terms.

15. From its inception, Vento recognized that a tremendous opportunity existed to establish a new category of motorcycles in Mexico, and it moved quickly to obtain first-mover advantage. Over a period of 10 years, Vento committed capital in excess of not less than [redacted] dollars to establish and operate the joint venture, in cash and in kind.

16. Rapid execution involved striking a joint venture with MotorBike, to leverage its existing sales and marketing experience in Mexico. And the joint venture was immediately successful, generating a [redacted] of the national market in 2003.

17. Vento imported, through a U.S. based enterprise called [redacted] components for both engines and motorcycles from China to the United States. [redacted] assembled the engines and sold them to Vento along with the multiple components required to assemble motorcycles in U.S. territory for importation into Mexico by MotorBike, on behalf of the joint venture. The joint venture was also responsible for marketing, sales strategies, commercial intelligence, know-how, intellectual property rights, technical information, training, post-sale servicing, human resources, sales force and collection services.

18. As stipulated by the terms of the JVA, [redacted] exclusive responsibility for all aspects of overarching sales strategy, marketing, and post-sale service under the terms of the joint venture, including: sale finance, commercial intelligence, intellectual property, customer information, and the tools and training for post-sale service. [redacted] maintained all necessary commercial, technical, business, and marketing information, in addition to capital resources, for the commercialization and promotion of the product in the territory of Mexico. [redacted] contributed to the development of commercial intelligence for the

joint venture enterprise and supplied the human resources required for sales and post-sale servicing of the product in Mexico.

19. The JVA also required [redacted] to devote an extensive range of intellectual property rights to promoting the business of the joint venture in Mexico, including patents, trademarks, utility models, industrial designs, advertising slogans, and copyrights.

20. The JVA further stipulated that Vento would extend a revolving loan of [redacted] dollars to MotorBike on October 13th, 2001, which was used to fund the business operations of the joint venture enterprise. The loan agreement, a copy of which is attached hereto as "Exhibit 7", provided that the term of the loan was dictated by the term of the JVA, Article 8 of which prescribed a renewable duration of five years. The JVA has thus far been renewed three times. In addition, Vento provided a subsidiary loan to MotorBike on March 1st, 2010, in the amount of [redacted] dollars. A copy of the second loan agreement is attached hereto as "Exhibit 8".

21. MotorBike also received a substantial infusion of [redacted] as provided under the JVA. The wholesale value of this in-kind contribution of capital by Vento to the joint venture enterprise in Mexico was approximately [redacted]

II.b *Mexico's Frustration of the Vento Business Model*

22. Vento's [redacted] all of the components required to build a motorcycle suitable for use with them to Vento, and Vento assembled the motorcycles in a plant it established in the territory of the United States. The object of [redacted] was to achieve compliance with rules stipulated in NAFTA Annex 401, which permitted Vento to certify its motorcycles as originating within the North American Free Trade Area – on the basis that at least 50% of the net cost of these products had been contributed through their assembly in the United States.

23. Pursuant to the terms of the joint venture, [redacted] arranged for the importation into Mexico of these Vento-branded motorcycles, with their "Made in the U.S.A." labels. [redacted] was also responsible for the day-to-day operations of the business of the joint venture, which included maintaining a national distribution network composed of Vento-authorized dealers, including service and repair centers. [redacted] was similarly responsible for the import, distribution, and sale of spare parts for these motorcycles – all under the general supervision and control of Vento, pursuant to the terms of the JVA.

24. Because Vento believed, in good faith, that it met the requirements of NAFTA Annex 401 on a *prima facie* basis, it issued NAFTA certificates of origin for all of the motorcycles produced in its facility in the United States. The joint venture's products thus qualified for duty-free importation into the territory of Mexico. Had they not qualified for duty-free treatment, these motorcycles would have instead attracted an *ad valorem* duty of 30%.

25. Through a combination of hard work and determination to seize the initiative, Vento quickly became the leading supplier for a rapidly growing market in Mexico: motorcycles with engine

displacements of between 49 and 249 cubic centimeters. Within just a couple of years, the Vento joint venture would establish excellent sales relationships with several major retail chains, thereby cultivating excellent brand recognition for its product.

26. The Vento-MotorBike joint venture revolutionized the market for small displacement motorcycles in Mexico. [redacted] were able to leverage careful sourcing of third-country components to achieve a total assembly process fully compliant with NAFTA's rules of origin and deliver a product of outstanding quality at a price that was both extremely competitive and profitable. Its introduction into Mexico transformed a low-volume *niche* space into a leading growth category for personal transportation nationwide. Before 2000, motorcycles' dealers in Mexico exclusively sold motorcycles in upfront cash payments; the Vento-MotorBike joint venture identified an important potential market and pioneered into the sales of motorcycles through [redacted] granting to the clients [redacted].

27. Vento's NAFTA business model not only allowed its joint venture with MotorBike to establish a new, high-growth category in the field of personal transportation, but to thrive after its success had attracted competition from well-established national brands, such as [redacted] as well as international brands, such as [redacted] among others.

28. As it would turn out, there was one non-commercial challenge that the Vento joint venture could not be expected to overcome: the discriminatory intervention of the Tax Administration Service (hereinafter: "SAT") of Mexico's Ministry of Finance and Public Credit. The very same local competitors who had been caught flat-footed by Vento's entrance into the market apparently used their political contacts to successfully complain to sympathetic government officials. These entreaties evidently prompted SAT to launch two investigations, covering all Vento products sold in Mexico, in both 2002 and 2003. It was in April 2003 that Vento received an official notification from SAT seeking to verify the origin of the products it had assembled in the USA for marketing, distribution, sale and servicing in the burgeoning market it had cultivated for them in Mexico.[2]

29. In undertaking these audits, the Government of Mexico's officials were under no illusions as to their marching orders: *viz.* they were to identify a justificatory basis for destroying Vento's competitive advantage, in order to serve and protect the interests of established motorcycle companies.

30. Applying Rule 2(a) of Article 2, Section I of Mexico's General Import and Export Tax Law (hereinafter: "LIGIE"), SAT concluded that the Vento joint venture had actually been importing, distributing, selling, and servicing Chinese-origin motorcycles in Mexico, rather than motorcycles that qualified for duty-free entry under NAFTA Annex 401.[3] Thus, every single one of the products sold by the joint venture during its first two full years of operation was suddenly subjected to a retroactive, 30% *ad valorem* tariff. Based on these findings and decisions by SAT, the new tariff would also be applied on a going-forward basis, and Vento

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[2] Derived from SAT's investigations against VENTO, [redacted] was also audited by SAT regarding the origin of [redacted] supplied to VENTO. MotorBike was also subject to origin and tax audits from SAT for the same periods and products.

[3] By applying Rule 2(a), according to SAT, the tariff shift requirement apparently was not met; therefore and since the specific rule of origin provides for the compliance of both, tariff shift and Regional Value Content, SAT denied the NAFTA origin to VENTO.

would lose its right to certify its products as NAFTA originating and label them as having been made in the U.S.A.

31. Not only did the SAT's decision strip away the joint venture's price advantage; the Mexican officials also seriously harmed the Vento and MotorBike brands, by repeatedly levelling false, public accusations of dishonest and/or fraudulent conduct against the joint venture partners and its employees. While these allegations received a wide hearing in local media outlets, including newspapers and magazines, no such charges were ever brought, much less proved, in a court of law.

32. Both financial and brand-related losses were also suffered as a result of SAT demands for the repayment of tax credits, plus penalties and interest, which it levelled against both the joint venture and its clients. Indeed, the demands for compensation, made both by SAT officials and by the joint venture clients, quickly incapacitated MotorBike as a viable joint venture partner, particularly given that Mexican officials had embargoed and frozen all of its bank accounts in Mexico.

33. The impact of SAT's decisions was severe and, ultimately, irreversible. In a matter of a few months, Vento's [redacted] market share would be diminished to small a fraction of its former size.

34. Over the next twelve years, Vento exhausted all available local remedies, seeking to overturn SAT's verification determinations in Mexican courts. It did so by pursuing the following legal procedures for both SAT determinations: (i) *recursos de revocación*; (ii) *juicios de nulidad*; and (iii) *amparos*. The SAT's verification determination regarding Vento's 2002 verification was upheld by a decision of Mexico's Federal Court, issued on May 26th, 2016, and was declared final and definitive on June 10th, 2016. The SAT's verification determination regarding Vento's 2003 verification was upheld by a decision of Mexico's Federal Court on January 15th, 2015, and was declared final and definitive on June 10th, 2015.

35. Meanwhile, Vento attempted to maintain its market share and rebuild its brand, even whilst the Government of Mexico's officials continued to publicly disparage the Vento brand and impugn the integrity of MotorBike and Vento officials. As sales lapsed, bank accounts were seized, and fines levied, MotorBike devolved into a non-operational entity and Vento shuttered its U.S. facilities.

36. Consequently, on March 29, 2006, Vento caused a new company to be incorporated under the laws of Mexico, MotoTransp, S.A. ("MotoTransp"). Vento possessed, and has since retained, *de facto* control over MotoTransp and the nascent joint venture enterprise originally launched with MotorBike. Vento intended MotoTransp to serve as the public and operational face of the joint venture enterprise, effectively serving both as a short-term successor to MotorBike as well as the enterprise whose formal establishment had been expressly contemplated in the JVA. Through MotoTransp, Vento began importing motorcycles directly from China into Mexico and paying all applicable taxes and duties, – marketing, distributing, selling, and servicing them under the Vento brand. A copy of the Letter of Assignment dated April 6, 2006, by means of which MotorBike assigned the rights and obligations under the JVA and the loan agreement to MotoTransp is attached hereto as "Exhibit 9".

37. The market for small displacement motorcycles became increasingly competitive over the ensuing years.[4] The joint venture's Vento-branded products not only suffered from the

[4] Growing from 45,000 units in 2003, to 700,000 units in 2016, as VENTO had predicted.

Government of Mexico's conduct as part of the SAT decisions and disputes. It also faced renewed competition from the big, international brands, in addition to a new and unexpected source of overwhelming competition: motorcycles allegedly "made" in Mexico. While not as powerful as a "Made in U.S.A." designation, the "Made in Mexico" label added value to any brand, as compared to products saddled with a "Made in China" label. Vento's joint venture would increasingly lose market share to these surprising new competitors over the coming years.

II.c *Mexico's Disparate Treatment of Vento Revealed*

38. Rule 2(a) of LIGIE Article 2 entitles Mexican tax and customs officials to treat importation of the components of a good as importation of the good itself. The text of Rule 2(a) is derived from the General Rules for the Interpretation of the Harmonized Commodity Description and Coding System, maintained by the World Customs Organization ("WCO"), which Mexico implemented as national law when it adopted the LIGIE, which provides, in relevant part:

> *2.(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.*

39. It was in using this rule that Mexico's officials had incapacitated Vento by ending its business model. They did so notwithstanding the fact that United States Customs and Border Protection officials had actually taken the opposite position using the very same rule. Vento's model was designed to ensure that sufficient value would be added during the assembly process so that the final product would qualify as an originating good under NAFTA Annex 401 (which sets a threshold of either 50% of net cost or 60% of transaction value for the tariff heading that encompasses motorcycles). While this methodology satisfied the U.S. officials, who were responsible for tariff classification of Vento's and [redacted] inventories, it was not accepted by the host State's officials, who – it would only recently be revealed – had never been interested in applying the rules dispassionately or even objectively.

40. Unaware of this hidden agenda, Vento exhausted its appeals over Mexico's application of Rule 2(a) – as implemented within the Mexican municipal legal order – over a period of twelve years.

41. To be sure, when the initial SAT verification rulings were issued, it was made abundantly clear to Vento, by Mexican officials, that the same result would have accrued had Vento and [redacted] facilities been located in Mexico rather than in Texas. This was because the very same WCO interpretive Rule 2(a) – which had been applied so as to strip Vento of its NAFTA origin certification – applies identically to imports into Mexico. Under such a scenario, imports of motorcycle parts and small displacement engines parts were dutiable at an *ad valorem* rate of 30%, because they would have been treated as pre-assembled "motorcycles," imported from China, for final assembly in Mexico.

42. Or at least this was what Vento had always been led to believe.

43. It was only after the Investor received final decisions for the 2002 and 2003 audits, in 2016 and 2015, respectively, that it began exploring new options for staying in the Mexican market. Had the decisions gone in its favour, Vento could have rebuilt and rehabilitated its investment based upon the original business model. With this option now foreclosed, it became necessary to identify an alternative, particularly in light of the new competition which had emerged from new "made in Mexico" motorcycles.[5]

44. It was in July 2016 that Vento first began examining what had appeared to be the approach recently taken by the aforementioned new entrants: *viz.* manufacturing motorcycles using Mexican-sourced components. This seemed to be the only explanation, as Vento knew – from first-hand experience – it was simply not possible, under Mexican law, for one to import most of the components for assembling motorcycles in Mexico without attracting the 30% tariff that came along with SAT's official interpretation of Rule 2(a).

45. After expending considerable effort researching the option, Vento executives came to the shocking conclusion that it was simply impossible to source all of the necessary components to manufacture a motorcycle locally in Mexico. The only plausible explanation was that Vento's competitors had actually been allowed by Mexico's officials to import motorcycle components from abroad, assemble them into motorcycles in Mexico, and attach "Made in Mexico" labels to them, all without being subjected to the same 30% duty as Vento had been forced to pay since 2004.

46. Vento utilized published customs importation data to validate this discouraging hypothesis, followed by site visits to no fewer than one dozen different manufacturing facilities in China, all of which were engaged in shipping disassembled motorcycles to Mexico. By these means, Vento learned that the so-called "Made in Mexico" motorcycles, which had been sapping away most of its market in recent years, were not Mexican after all – or at least not according to the SAT's 2003 decision, which had put an abrupt halt to Vento's NAFTA production model. Vento's Mexican competitors had somehow been permitted by the host State's authorities to import completely disassembled motorcycles into Mexico from China and India, without being forced to pay the same applicable import duties that Vento had been paying since ordered to do so by SAT officials in 2003 (on all of its production since 2002).

47. Further research, conducted by Vento in late 2016, has revealed that vehicle identification numbers ("VINs") have been, and continue to be, applied to motorcycles produced by Vento's Mexican competitors wrongly indicating Mexican origin, even though – as per SAT's binding determinations – these products are composed entirely of disassembled motorcycles originating from China and India. Indeed, it appears as though Mexico's Ministry of Economy has been providing the largest domestic "producer" of what SAT must have known were really Chinese motorcycles a designation under the *Código de Identificación de Fabricante Internacional* ("CIFI") (or a World Manufacturer Identifier ("WMI")) permitting them to be labelled as being of Mexican origin for purposes of their VINs (vehicle identification numbers).

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[5] Vento had originally faced down competition from motorcycles apparently made in Mexico, by multinationals such as [redacted]. These competitors had been selling their own small displacement products for such higher amounts than Vento's new product that it was possible to assume that they were using Mexican parts and components, and thus not subject to paying the 30% duty for importations of substantially complete motorcycles. It would require significant research to uncover the truth about these importations.

48. The misleading "Made in Mexico" territorial designation assigned to these motorcycles has deceptively bolstered the value of such competing brands. Much worse, however, Vento's competitors appear to have avoided paying the appropriate duties for their products for as long as Vento's joint venture enterprise has been paying them: *viz.* almost fifteen years. For motorcycles, the components of which were imported between 2002 and 2003, Vento's Mexican-owned competitors avoided paying 30% in ad valorem duties,[6] and continued to do so to the present, all of which Vento has been dutifully paying, under the watchful eyes of Government of Mexico's officials.

49. How could the Government of Mexico have failed to enforce Rule 2 (a) of LIGIE Article 2 against these Mexican-based competitors of the Vento joint venture for as long as fifteen years? This outrageous enforcement failure only becomes more incredible when one considers that it occurred during the exact same period when Mexican officials were fighting a prolonged, public legal battle with a U.S.-controlled joint venture over enforcement of the very same rule, involving the very same products, in the very same market.

III. LEGAL BASIS FOR CLAIMS UNDERLYING THE DISPUTE

50. The relevant portions of the applicable provisions of NAFTA Chapter 11 are as follows:

> ***Article 1102: National Treatment***
> *1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.*
>
> *2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.*
> ...
>
> ***Article 1103: Most-Favored-Nation Treatment***
> *1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.*
> *2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.*

[6] *Ad valorem* import duties for motorcycles and motorcycles' components have phased-out through the years from 30% to 15%.

Article 1104: Standard of Treatment
Each Party shall accord to investors of another Party and to investments of investors of another Party the better of the treatment required by Articles 1102 and 1103.

Article 1105: Minimum Standard of Treatment
1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.
...

51. Whether by intention or neglect, and for as many as fifteen years, the Government of Mexico has been secretly accorded less favourable treatment to Vento and its Mexican investment enterprises (MotoTransp and its predecessor, the MotorBike joint venture enterprise) by:

(i) Imposing *ad valorem* duties of as much as 30% on any motorcycles produced by Vento in Texas; whilst simultaneously refraining from imposing, or neglecting to impose, like encumbrances on its competitors in the same market for small displacement motorcycles in the territory of Mexico that use Vento's same commercial and operational model;

(ii) Prohibiting Vento's claim of its U.S.-assembled motorcycles as having been "Made in America" whilst simultaneously permitting its competitors to enjoy a "Made in Mexico" claim to motorcycles assembled in an identical fashion in Mexico; and by

(iii) Leaving Vento no choice but to market motorcycles manufactured and assembled in China (and labelled as such) to stay in business, whilst allowing its competitors to import essentially the very same motorcycles, unassembled, to avoid paying the same 30% *ad valorem* duty being applied to Vento's products, and even certifying their products as made in Mexico, contrary to its own construction of the relevant rules.

52. It is manifestly more favourable for certain competitors in a single market to be able to import all of the components for their product from abroad without having such imports construed by customs officials as the importation of the product itself (under Rule 2(a) of LIGIE Article 2). Such treatment allows them to (i) claim that the product was made in the North American Free Trade Area, (ii) avoid paying the substantial duties that have been imposed upon their competitors, (iii) enjoy the reputational benefit of labelling their products as having been locally produced, and (iv) even expand their business through the export of these "Made in Mexico" motorcycles to other countries with which Mexico has Free Trade Agreements in Central and South America, whilst their competitors are compelled to label their products as foreign made.

53. There can be no conceivable policy justification for such differences in treatment. Preliminary investigations indicate that the beneficiaries of the more favourable treatment accorded by the Government of Mexico are investors and enterprises of Mexico, although it is possible that some of the affected investors are foreign nationals. Hence, Claimant can

make out a *prima facie* breach of Article 1102, but also maintains its right to additionally rely upon Articles 1103, 1104, and 1105, in the event that a similarly situated investor possessing the nationality of a third party is also identified during the course of the arbitration.

54. There can be no doubt that Vento and its investment enterprises in Mexico have suffered grievous economic losses as a result of the less favourable treatment, which the Government of Mexico may have been according to some or all of their Mexican-owned competitors for as many as fifteen years.

55. Moreover, because the Government of Mexico has refrained from publishing the reasons – if any – for its differential treatment of Vento's Mexican competitors, it was not possible for Vento or its investment enterprises to have ever become aware of the breach. It was also not possible, and frankly unthinkable, that Respondent's officials would have been ordered to manipulate what are supposed to be objective rules so as to harm one enterprise at the behest of another.

56. For the purposes of Article 1105, the measure at issue is the manner and purpose in and for which Vento's 2002 and 2003 audits were conducted by the host State's officials. It was only through the process of preparing this request for arbitration, and after being categorically rebuffed by Mexico's officials in respect of Vento's interest in obtaining a compensatory settlement, that Vento discovered that Mexico also breached its obligations under Article 1105 of the NAFTA. It was only through interviewing some of the people who had been responsible for conducting the SAT audits over thirteen years ago that it emerged they were exercising their authority under Mexican law for an improper purpose: *viz.* to justify depriving Vento of its competitive disadvantage, apparently at the behest of the companies that had complained to senior officials about the upstart's upset of a heretofore placid motorcycle market.

57. It was bad enough to learn that Mexico had not been fairly enforcing its customs laws, *vis-à-vis* Vento and its competitors, for as long as fifteen years. It was simply shocking to learn that the initial impetus for such unfavourable treatment was rooted in maladministration, i.e. a blatant failure to exercise discretionary enforcement authority in good faith, and for a proper purpose. But for such egregious conduct, knowledge of which was withheld from Vento throughout over a decade of court proceedings, Vento would undoubtedly occupy a premier location in the market for motorcycles in Mexico today.

IV. RELIEF AND AMOUNT OF DAMAGES

58. Vento sought, through consultations, to have the Government of Mexico cure its non-compliance with NAFTA Article 1102, both by immediately engaging in even-handed enforcement of the LIGIE – in respect of all competitors in the market for small displacement motorcycles in Mexico – and compensating Vento for the harm it has suffered due to past lapses in such enforcement. As consultations were unsuccessful, Vento is invoking arbitration under the NAFTA, both in its own right, and on behalf of the MotorBike joint venture enterprise and MotoTransp, seeking compensation for the damages caused by or arising out of the measures described herein, in breach of Mexico's obligations contained in Section A of Chapter 11 of NAFTA.

V. CONFIDENTIALITY

59. The information provided by Vento in this document and in its annexes contain strategies of internal organization, marketing and other data, the disclosure or inappropriate use of which could place the company at a serious disadvantage in relation to its competitors, thereby generating irreversible damage to its competitive position and/or conferring a significant and improper advantage to its competitors. Disclosure or improper use of this information, would result in serious and irreparable injury to Vento, as well as, for the security of its shareholders and/or representatives, since it contains highly sensitive strategic information on the operation of my represented company. Consequently, the information marked CONFIDENTIAL may only be used by Respondent and the ICSID Secretariat on a confidential basis and for the limited purposes of conducting and/or administering the arbitration.

VI. RESERVATION OF RIGHTS

60. The Claimant expressly reserves all rights, including but not limited to those afforded under Chapter 11 of the NAFTA and under the provisions of the Arbitration Rules, to set forth its claim for relief in greater detail, and to present evidence and argumentation in support thereof in subsequent filings and presentations to the Arbitration Tribunal that is selected in this matter.

VII. RELIEF SOUGHT

61. Claimant respectfully requests an award:

(i) Declaring that the United Mexican States has violated its obligations under the NAFTA, by taking the measures described in this Request against Claimant's investment;

(ii) Awarding the Claimant compensation for all damages and losses suffered as a result of the conduct of Mexico, on the basis of full reparation, in an amount to be determined as of the date of the award (currently calculated to be not less than [redacted];

(iii) Awarding the Claimant pre- and post-award interest on all sums awarded, in an amount based upon a commercially reasonable rate;

(iv) Awarding the Claimant any amount required to pay any applicable tax in order to maintain the integrity of the award;

(v) Awarding the Claimant its costs and expenses of this proceeding, including attorneys' fees, in an amount to be determined in the course of this proceeding by such means as the Tribunal may direct; and

(vi) Ordering such other and further relief as may be just and appropriate in the circumstances.

VIII. CLOSING STATEMENT

62. For the reasons stated above, on behalf of Investor, the undersigned Counsel and representatives, respectfully request the Secretary-General of ICSID to approve access to the Arbitration Additional Facility Mechanism and to register this request in the Arbitration Additional Facility Register as set out in Article 4 of the ICSID Arbitration Additional Facility Rules.

Dated: August 7th, 2017

Investors' Counsel
Luis Felipe Aguilar Rico, Esq.
Aguilar y Loera, S.C.

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Dr. Todd Weiler, Esq.
Barrister & Solicitor

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