

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

B-Mex, LLC and others

v.

United Mexican States (ICSID Case No. ARB(AF)/16/3)

PROCEDURAL ORDER NO. 6

**NON-DISPUTING PARTIES
FURTHER SUBMISSIONS PURSUANT TO NAFTA ARTICLE 1128**

Members of the Tribunal

Dr. Gaëtan Verhoosel, President
Prof. Gary Born, Arbitrator
Mr. Raúl Emilio Vinuesa, Arbitrator

Secretary of the Tribunal

Ms. Natalí Sequeira, ICSID

24 July 2018

The Tribunal refers to the notices issued to the Tribunal and the parties (the *Disputing Parties*) by the United States of America and Canada (the *Non-Disputing Parties*) dated 20 July and 23 July 2018 respectively, proposing to file further submissions pursuant to Article 1128 of NAFTA by 30 August 2018.

Article 1128 provides that “[o]n written notice to the disputing parties, a Party may make *submissions* to a Tribunal on a question of interpretation of this Agreement” (emphasis added). Under the terms of this provision, it is clear therefore that the Non-Disputing Parties have the right to make one or more such submissions. But that right is neither boundless nor unqualified.

First, the right has a clearly defined subject matter scope, limited to submissions only “on a question of interpretation of this Agreement”. Here, the further Article 1128 submissions noticed by the Non-Disputing Parties must therefore be confined to the questions of interpretation of NAFTA set out in Procedural Order No. 5.

Second, Article 1128 does not trump the Tribunal’s imperative mandate to conduct the arbitration with due regard to both procedural fairness and procedural efficiency:

- Procedural fairness in the circumstances requires that the Non-Disputing Parties file their further Article 1128 submissions on the same terms as the Disputing Parties—i.e., simultaneously, as set out in Procedural Order No. 4.
- Procedural efficiency in the circumstances requires that the Tribunal’s work, carefully planned on the basis of the 30 July 2018 filing date for the post-hearing briefs, suffers no undue delay. The Tribunal notes in this regard that Procedural Order No. 5 has been publicly available since 5 June 2018 and that the Non-Disputing Parties—both of whom have previously made Article 1128 submissions in this proceeding and presumptively have been monitoring its progress—have advanced no explanation for the seven weeks that have lapsed since and no reasons for the proposed filing date of 30 August 2018.

Based on the foregoing, the Tribunal directs the Disputing Parties to file their post-hearing briefs and the Non-Disputing Parties to file their further Article 1128 submissions simultaneously, on **Friday 17 August 2018, 5 p.m. Eastern Time**. No submissions after that date will be admitted. The Tribunal’s prior directions are varied as necessary accordingly.

On behalf of the Tribunal,



Dr. Gaëtan Verhoosel
President of the Tribunal
Date: 24 July 2018