

SUBSECRETARÍA DE COMERCIO EXTERIOR

**DIRECCIÓN GENERAL DE CONSULTORÍA
JURÍDICA DE NEGOCIACIONES**



SECRETARÍA
DE ECONOMÍA

SE

México, D.F. a 21 de enero de 2011.

Of. No. DGCJN.511.25.042.2011.

Asunto: Mobil Investments Canada Inc. y
Murphy Oil Corporation c. Gobierno de Canadá
Caso CIADI No. ARB (AF)/07/04.

Vía correo electrónico

MARTINA POLASEK

Secretaria del Tribunal

Centro Internacional de Arreglo de
Diferencias Relativas a Inversiones
mpolasek@worldbank.org

Presente.

Por este medio me permito enviarle el escrito del Gobierno de los Estados Unidos Mexicanos al amparo del artículo 1128 del Tratado de Libre Comercio de América del Norte en respuesta a las comunicaciones del Tribunal arbitral de fechas 26 de octubre y 9 de noviembre de 2010 por las cuales solicitó aclaraciones en relación con los escritos presentados por los gobiernos de los Estados Unidos Mexicanos y de los Estados Unidos de América respecto del caso de referencia.

Atentamente,
**El Director de Consultoría Jurídica
de Negociaciones "D"**



HUGO ROMERO MARTÍNEZ

C.c.p. **Carlos Véjar Borrego**, Director General de Consultoría Jurídica de Negociaciones, Gobierno de los Estados Unidos Mexicanos.

Sylvie Tabet, Trade Law Bureau, Canadian Department of Foreign Affairs and International Trade, Government of Canada.

Mark E. Feldman, Office of the Legal Advisor U.S. Department of State, Government of the United States of America.

COURTESY TRANSLATION

Mexico City, January 21st, 2011.

**RE: Mobil Investments Canada Inc. and Murphy
Oil Corporation v. Government of Canada ICSID
Case No. ARB (AF)/07/04**

By email

**Ms. Martina Polasek
Secretary of the Tribunal
International Centre for the Settlement of Investment Disputes
mpolasek@worldbank.org**

The Government of the United Mexican States hereby presents to the Tribunal its submissions made pursuant Article 1128 of the North American Free Trade Agreement in response to Tribunal's requests of October 26, 2010 and November 9, 2010 for clarifications concerning the submissions made by the United Mexican States and the United States of America in the above-captioned arbitration.

Sincerely,

HUGO ROMERO MARTÍNEZ

C.c.p. **Carlos Véjar Borrego**. Director General de Consultoría Jurídica de Negociaciones. Gobierno de los Estados Unidos Mexicanos.
Sylvie Tabet. Trade Law Bureau. Canadian Department of Foreign Affairs and International Trade. Government of Canada.
Mark E. Feldman. Office of the Legal Advisor U.S. Department of State. Government of the United States of America.

**IN THE ARBITRATION UNDER CHAPTER ELEVEN OF THE NORTH AMERICAN
FREE TRADE AGREEMENT AND THE ICSID ARBITRATION (ADDITIONAL
FACILITY) RULES BETWEEN**

**MOBIL INVESTMENTS CANADA INC.
AND MURPHY OIL CORPORATION
CLAIMANTS/INVESTORS,**

v.

**GOVERNMENT OF CANADA,
RESPONDENT/PARTY**

**SUBMISSION
OF THE UNITED MEXICAN STATES
RESPONDING TO QUESTIONS RAISED BY THE TRIBUNAL**

Pursuant to Article 1128 of the North American Free Trade Agreement (NAFTA), the Government of Mexico makes the following submission in response to the questions raised by the Tribunal by communication sent on October 26th, 2010.

Mexico takes no position on the facts of this dispute, and the fact that a legal issue arising in the proceeding is not addressed in this submission should not be taken to constitute Mexico's concurrence in or disagreement with a position taken by either of the disputing parties.

“[I]s the determination of whether a subordinate measure is “consistent with the measure” to be assessed by reference to (i) the national law governing the measure under the authority of which the subordinate measure has been adopted, or (ii) the law of NAFTA, or (iii) both? If it is or includes the law of NAFTA, what is the standard by which such assessment is made, and the available sources thereof?”

1. Annex I of the NAFTA sets out in paragraph 2(f)(ii) that the following requirements must be met by a measure to be considered as “subordinate measure”, and therefore included in the “Measures” element of reservations listed in Annex I: that it must be adopted or maintained (a) under the authority of, and (b) consistent with the measure.¹
2. Legal systems (national laws) are not finished or at rest, to the contrary they are in a

¹ According with paragraph 2(f)(ii), the “Measures” element identifies the laws, regulations or other measures, as qualified, where indicated, by the Description element, for which the reservation is taken.

continuous process of creation (*i.e.* a legal system is a succession of momentary legal systems; a constant process of building regulations²); consequently, in order to preserve the uniformity of a legal system, the system must be provided with the necessary rules to determine whether a certain measure is valid, as well as the means to correct it.

3. Taking the above into consideration, in order to determine whether a subordinate measure fulfills the requirements set out in paragraph 2(f)(ii) of Annex I, it would be necessary to carry on an assessment of the subordinate measure under the national law governing the measure listed in Annex I.

“As a matter of (i) national law, and/or (ii) the law of NAFTA, can a subordinate measure be “consistent with the measure” if it imposes additional and/or more onerous burdens on a legal or natural person who is subject to the subordinate measure?”

4. A subordinate measure can be “consistent with the [listed] measure” if it imposes additional and/or more onerous burdens.

5. Burdens might be characterized as more onerous or additional but this does not mean that those burdens are automatically inconsistent with the measure listed in Annex I.

6. It is difficult to assess in general terms (or in the abstract) if an additional and/or more onerous burden imposed by a subordinate measure is consistent or not with a listed measure set out in Annex I. Therefore, a case by case analysis is required.

All of which is respectfully submitted,

El Director de Consultoría Jurídica de Negociaciones “D”



Hugo Romero Martínez

Dated: January 21st, 2010.

² Tamayo y Salmorán, Rolando, *Elementos para una Teoría General del Derecho (Introducción al Estudio de la Ciencia Jurídica)*, México, [Elements for a General Theory of Law, Introduction to the Study of Legal Science], Themis, 1998, p. 215, footnote 23.