

**BEFORE THE INTERNATIONAL CENTRE FOR SETTLEMENT OF
INVESTMENT DISPUTES UNDER THE RULES GOVERNING THE
ADDITIONAL FACILITY FOR THE ADMINISTRATION OF PROCEEDINGS
AND UNDER THE NORTH AMERICAN FREE TRADE AGREEMENT**

**Waste Management, Inc.
Claimant
v.**

**The Government of the United Mexican States
Respondent**

ICSID Case No. ARB (AF)/00/3

**SUBMISSION OF CANADA
PURSUANT TO ARTICLE 1128 OF THE NAFTA**

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I Introduction

1. Pursuant to Article 1128 of the *North American Free Trade Agreement* ("NAFTA"), Canada makes this submission in relation to certain questions of interpretation of the NAFTA raised in connection with the challenge by Respondent United Mexican States ("Mexico") to the jurisdiction of the Tribunal in this proceeding.
2. This submission does not address all interpretative issues that may arise in this proceeding. No inference should be drawn from Canada's silence in relation to interpretative issues not addressed by these submissions.
3. Canada takes no position with respect to issues of fact and the application of these submissions to the facts of this particular case.

II Breach of Contract

4. Pursuant to NAFTA Articles 1116 and 1117, an Investor of a NAFTA Party can bring a claim that another NAFTA Party has breached an obligation in Section A of Chapter Eleven or certain parts of Chapter 15. The jurisdiction of a NAFTA Tribunal established under Chapter Eleven is limited to examining whether there has been a breach of the obligations listed in Articles 1116 or 1117 as alleged by the Investor, in this case the alleged breach of Article 1105 and 1110.
5. A NAFTA Tribunal does not have jurisdiction to determine contractual claims. A mere breach by a State of its contractual obligations with an investor, does not, in and of itself, constitute a breach of the minimum standard of treatment or an expropriation.
6. As the *Azinian* Tribunal has recognized, "NAFTA does not [...] allow investors to seek international arbitration for mere contractual breaches. Indeed, NAFTA cannot

possibly be read to create such a regime, which would have elevated a multitude of ordinary transactions with public authorities into potential international disputes."¹

7. The Tribunal's analysis should therefore be based on the specific NAFTA provisions at issue in the claim, and not simply on the question of whether or not there was a breach of contract. To find a breach of the minimum standard of treatment under Article 1105, a Tribunal would have to conclude that the State's actions fell below the customary international law standard. To find an expropriation under Article 1110, the Tribunal would have to conclude that the State's actions have all the attributes of an expropriation, including a substantial deprivation or substantial interference with the alleged investment. For example, tribunals have found expropriations in certain cases where there has been a taking of assets or an interference with the management of a company so severe that it amounts to a taking.
8. Finally, Canada cautions against the use of the jurisprudence of the U.S. Iran-Claims Tribunal in interpreting the obligation under Article 1110 of NAFTA as that Tribunal's mandate expressly extended beyond expropriation to include "other measures affecting property rights".

All of which is respectfully submitted,



Sylvie Tabet
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¹ Robert Azinian and others v. United Mexican States, ICSID case No. Arb(AF)/97/2, at paragraph 87.