

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

APOTEX HOLDINGS INC. AND APOTEX INC.,
CLAIMANTS/INVESTORS,

v.

GOVERNMENT OF THE UNITED STATES OF AMERICA,
RESPONDENT/PARTY

SUBMISSION
OF THE UNITED MEXICAN STATES

1. Pursuant to Article 1128 of the North American Free Trade Agreement (NAFTA), the Government of Mexico makes the following submission.
2. 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. Likewise, Mexico preserves its right to make additional submissions if necessary according with Article 1128 of the NAFTA.

Definition of investment in Article 1139(h).

3. Mexico fully concurs with the US submissions stated in its counter memorial (¶¶ 245-263) with respect the interpretation of Article 1139(h). In Mexico's submission, the Tribunal should take into account Article 1101(1) as part of the context to

correctly interpret Article 1139(h).

4. Article 1101(1) has been correctly described as “the gateway leading to the dispute resolution provisions of Chapter 11”.¹ It is also the gateway to the entirety of Chapter Eleven as it establishes and places limits on its “scope and coverage”. Article 1101(1) is thus a necessary component of the context required to interpret Article 1139(h).
5. Article 1101(1) provides clear guidance, as interpreted by previous submissions of the NAFTA Parties and previous tribunals,² to conclude that only investments (as defined in Article 1139) of an investor of a Party located *in the territory* of another Party fall within the scope and coverage of Chapter Eleven.
6. Therefore, each and every kind of investments listed in Article 1139 must comply with this “territorial” requirement, and applying this component as part of the context to interpret Article 1139(h), it is clear that it requires a commitment of capital or other resources of an investor of a Party *in the territory* of another Party.
7. Applying Article 33(4) of the Vienna Convention on the Law of Treaties, even if a comparison of the three versions of the NAFTA (English, French and Spanish) might disclose a difference of meaning in NAFTA Article 1139(h), it can be seen that the text of the English and French versions are on their face consistent with the Article 1101(1) and thus any perceived discrepancy with the Spanish text is best

¹ *Methanex Corp. v. United States of America*, NAFTA/UNCITRAL, First Partial Award ¶ 106 (Aug. 7, 2002).

² See *Counter-memorial on merits and objections to jurisdiction of Respondent United States of America*, ¶¶ 255-263 (Dec. 14, 2013). *Apotex Holdings Inc. and Apotex Inc. v. United States of America* (Case No. ARB(AF)/12/1).

reconciled by upholding the territoriality requirement.

8. An interpretation of Article 1139(h) that does not take into account the territoriality requirement of Article 1101(1) as part of the context would render the clear scope and coverage limitations meaningless.

All of which is respectfully submitted,



Carlos Véjar Borjago

General Legal Counsel on International Trade

February 8, 2013