

September 23, 2002

*By Facsimile & Mail*

Members of the Tribunal  
c/o Ms. Margrete Stevens  
Secretary of the Tribunal  
International Centre for Settlement  
of Investment Disputes  
1818 H Street, N.W.  
Washington, D.C. 20433

Re: *Methanex Corporation v. United States of America*

Gentlemen:

On behalf of respondent United States of America and as contemplated by the Tribunal's order of September 9, 2002, we respectfully submit that Methanex's August 28, 2002 request for interpretation of the First Partial Award and other relief should be denied for the following reasons.

Request for Interpretation. Methanex's request for interpretation of the award pursuant to Article 35 of the UNCITRAL Arbitration Rules is without merit. The phrase "'interpretation of the award' [in that Article] was intended to mean 'clarification of the award.' . . . Thus, Article 35, paragraph 1, was intended to enable a party to obtain clarification of an award whose language is ambiguous." *Pepsico, Inc. v. Iran*, 13 Iran-U.S. Cl. Trib. Rep. 328 (Dec. 19, 1986) (Dec. No. 55-18-1) (quoting Summary of Discussion on Preliminary Draft (8<sup>th</sup> Session), U.N. Doc. A/10017, ¶¶ 201, 206). Perhaps because of the limited scope of Article 35, the Iran-U.S. Claims Tribunal "has never granted a request for interpretation of an award," despite the many such requests over the years. JACOMIJN J. HOF, COMMENTARY ON THE UNCITRAL ARBITRATION RULES: THE APPLICATION BY THE IRAN-U.S. CLAIMS TRIBUNAL 279 (1991).

The First Partial Award is in no way ambiguous. As used in the award, the meaning and effect of the phrases "legally significant connection" and "fresh pleading" are clear. And no ambiguity exists with respect to what evidentiary materials Methanex must submit within ninety days, or with respect to the Tribunal's decision to wait until

after reviewing Methanex's fresh pleading and evidentiary materials to decide how to proceed.

Indeed, Methanex's submission is more one for reconsideration of the award than a request for its interpretation. Methanex's request for a precise delimitation of when measures bear a "legally significant connection" to an investment presents a case in point. The award quite clearly *avoids* such a delimitation, resolving instead to address the question of whether the measures at issue in this case bear the requisite connection to Methanex or its investments only after the record is more fully developed. *See* Award at 59 ¶ 139 ("whilst the exact line may remain undrawn, it should still be possible to determine on which side of the divide a particular claim must lie."); *id.* at 67 ¶ 159 ("given the procedural solution on which we have decided below, it would be inappropriate here to develop any further analysis of Methanex's factual case."). In short, what Methanex requests is not a clarification of the Tribunal's decision but a decision different from the one the Tribunal clearly made. This is not permitted under Article 35.

Request for Other Relief. Methanex's two other outstanding requests for relief are equally without merit. The Tribunal declined to rule "on Methanex's Application for Documentary Disclosure, it being allowed to re-submit this application after its fresh pleading (if relevant)." Partial Award at 74 ¶ 172(8). Methanex offers no explanation as to how the NAFTA's negotiating history could be necessary, or even useful, for its immediate tasks, which consist of producing a fresh pleading of fact and accompanying evidentiary materials. Its August 28 letter provides no basis for revisiting the timing on applications for documentary disclosure contemplated by the award.

Nor is there any basis for Methanex's request that the Tribunal amend its ruling that Methanex submit a fresh pleading and all evidentiary materials by November 5, 2002, so that Methanex has ninety days "or something more" from the date the Tribunal rules on Methanex's interpretation request. In support of this tolling request, Methanex merely asserts that "whatever further clarification the Tribunal ultimately provides, the process of requesting and obtaining it will have consumed a considerable amount of time." Methanex Letter at 9.

The amount of time that Methanex took to prepare and that the Tribunal takes to rule on the interpretation request is irrelevant. Simply because the request is pending does not bear on whether Methanex should proceed to comply with the First Partial Award, and Methanex identifies no rationale or authority to the contrary. This is especially the case here given that (for the reasons discussed above) Methanex's interpretation request is devoid of merit and Methanex took three weeks to prepare its 10-page letter (only six of which set forth its request for interpretation). Moreover, Methanex identifies no way that, even if the Tribunal were to grant any part of its interpretation request, its interests would be adversely affected by proceeding to comply – on the assumption that the request will be denied *in toto* – with the Partial Award. And, contrary to its suggestion, Methanex has had over *three years* to assemble the evidence

that supposedly supports its case in chief; its attempt to find fault in the award's grant of an additional 90 days to finalize that evidence is without merit.

\* \* \* \* \*

For all of the above reasons, the United States respectfully submits that the Tribunal should deny Methanex's request in its entirety.

Respectfully submitted,

Barton Legum  
Chief, NAFTA Arbitration Division  
Office of International Claims  
and Investment Disputes

Copies:  
Christopher F. Dugan, Esq.  
James A. Wilderotter, Esq.  
Ms. Margrete Stevens