

IN THE MATTER OF A CLAIM UNDER CHAPTER 11, SECTION A
OF THE NORTH AMERICAN FREE TRADE AGREEMENT
and
IN THE MATTER OF AN ARBITRATION UNDER
UNCITRAL ARBITRATION RULES

BETWEEN:

METHANEX CORPORATION

Claimant

and

THE UNITED STATES OF AMERICA
as represented by the DEPARTMENT OF STATE

Respondent

FURTHER SUBMISSIONS OF THE CLAIMANT TO THE PETITION OF
THE INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT
("IISD")

and

SUBMISSIONS OF THE CLAIMANT RESPECTING THE JOINT PETITION OF
COMMUNITIES FOR A BETTER ENVIRONMENT, THE BLUE WATER
NETWORK OF EARTH ISLAND INSTITUTE, AND THE CENTER FOR
INTERNATIONAL ENVIRONMENTAL LAW
(COLLECTIVELY, THE "ENVIRONMENTALISTS")

1. The Claimant repeats and relies on its submissions filed on August 31, 2000
(attached hereto at Tab 2).

Jurisdiction

2. The Tribunal would exceed its jurisdiction if the *amicus curiae* petitions are
granted without the express consent of the parties to this arbitration. The

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..... has not provided such consent. In the circumstances, there is no jurisdiction in this Tribunal to grant these petitions.

3. To permit non-parties to make submissions in a private arbitration proceeding is a substantive matter, not merely a procedural issue falling within the ambit of the Tribunal's authority to conduct the arbitration in such a manner as it considers appropriate. Unlike judicial proceedings, the admission of non-parties to a privately contracted arbitral agreement is a substantive interference with the rights of the parties. Further, as previously noted (Tab 3), this Tribunal has no authority pursuant to Article 27 of the UNCITRAL Arbitration Rules to consider the *amicus curiae* submissions as expert evidence.

4. It is not within the purview of this Tribunal to remedy any perceived shortcomings of the NAFTA treaty or the UNCITRAL Rules. If the settlement disputes process outlined in Chapter 11 Section B is to be given greater transparency, it is for the NAFTA Parties to effect the necessary changes to the treaty. It is not the task of arbitration panels constituted for the purposes of determining liability for damages to broaden or enhance access to the dispute resolution process. It is the task of this Tribunal to deal with applications within the UNCITRAL Rules. After careful search, the Claimant is not aware of any arbitral tribunal having granted *amicus curiae* status in an arbitration conducted under the UNCITRAL Rules.

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Turners of Process

5. Private interest groups wishing to have their views placed before the Tribunal may convey their information to any one of the three NAFTA Parties who, by Article 1138, have the right to make submissions to a Tribunal in respect of a question of interpretation of NAFTA. This is consistent with fundamental principles of international law wherein the executive branch of a government speaks for and on behalf of the country and its citizens.
6. If the evidence to be offered is relevant, either party to the arbitration is well within its rights to call upon USD and/or the Environmentalists to offer their testimony as evidence in the proceedings and be cross-examined thereon. To permit the USD or the Environmentalists to appear as *amicus curiae* would effectively vault these entities to a position of greater standing than the parties to the arbitration as there are no means by which to cross-examine an *amicus curiae* on its submissions.
7. Throughout their submissions, it is apparent that USD and the Environmentalists misapprehend both the factual underpinnings and the legal implications of these proceedings. As pleaded in paragraph 12 of the Claimant's Reply, "there is not a shred of clinical or epidemiological evidence to support the notion that MTBE has caused or will cause any human cancer. Moreover, there is no meaningful evidence that MTBE is causally related to any definitive human disease." Further, the measures giving rise to this action specifically excluded health as a justification for the action being taken. Nonetheless, the Environmentalists

repeatedly refer to health as a relevant matter, as has the Respondent. Fairness would require that the Claimant be given the opportunity to cross-examine the Environmentalists as to the assumptions upon which they have formulated their opinions. This cannot be effected if the Environmentalists are permitted to participate in the arbitration as *amicus curiae*.

8. If the Tribunal attempted to set up a procedure whereby the *amici curiae* would be called upon to prove the factual basis for their contentions and be subject to cross-examination, the practical effect would be that the Claimant would end up litigating with an entity who is not a party to the Arbitration Agreement (see Tab 2).

A narrow view of justice

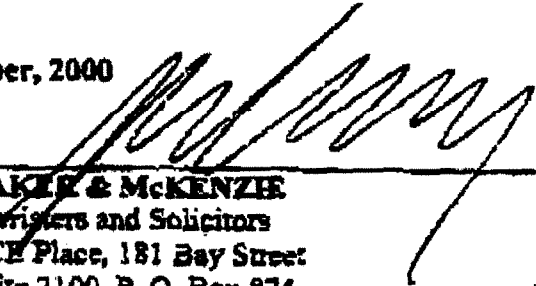
9. It is a conceit to presume that justice cannot prevail without the existence of *amicus curiae* submissions. Democratic societies exist without the judicial acceptance of *amicus curiae*. In fact, it is the Claimant's understanding that *amicus curiae* submissions are foreign to the judicial process in Mexico. It is inappropriate to suggest that constitutional principles or judicial norms of any one Party should prevail over the NAFTA dispute resolution process or those of another Party. These proceedings are by definition international and as such, domestic laws are of no application.
10. Similarly, reference to the WTO is irrelevant. In any event, the submissions of the Environmentalists are incorrect. The Claimant is unaware of any WTO panel or appellate body having ever accepted for consideration an unsolicited *amicus*

amicus brief. While briefs may have been filed in each case, the Panel or appellate body has determined they should not be considered. Only WTO members have a legal right to file materials that must be considered. While DSU Article 13 allows a Panel to seek information from outside sources, the Claimant is unaware of any WTO panel having used this provision to allow *amicus curiae* briefs.

Precedential value

- 11. NAFTA specifically provides in Article 1136 (1) that there is to be no precedent set by any award rendered pursuant to Chapter 11. If there is a precedent to be set, it is in the jurisdictional order which is sought and which, if granted, would change the law regarding commercial arbitration.
- 12. To grant standing to the IISD and the Environmentalists would not only be outside the jurisdiction of this Tribunal and unfair, but would amount to a fundamental departure from established arbitral law.

Respectfully submitted this 27th day of October, 2000



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INTERNATIONAL LITIGATION METHANEX Pledings Further Submissions regarding IISD