

**NOTICE OF ARBITRATION  
UNDER THE ARBITRATION RULES OF THE  
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW  
and  
THE NORTH AMERICAN FREE TRADE AGREEMENT**

**B E T W E E N:**

**METHANEX CORPORATION**

**Claimant/Investor**

**1800 Waterfront Centre  
200 Burrard Street  
Vancouver, BC  
Canada V6C 3M1**

**By its Solicitors,  
BAKER & McKENZIE  
BCE Place  
181 Bay St., Suite 2100  
Toronto, ON  
Canada M5J 2T3**

**and**

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

**Respondent/Party**

**The Executive Director  
Office of the Legal Advisor  
US Department of State  
2201 C. Street N.W.  
Room 5519  
Washington, D.C.  
USA 20520**

**NOTICE OF A SUBMISSION OF A CLAIM TO ARBITRATION**

Pursuant to Article 3 of the United Nations Commission on International Trade Law (“UNCITRAL”) and Articles 1116 and 1120 of the North American Free Trade Agreement (NAFTA), the claimant, Methanex Corporation (“Methanex”), hereby gives notice of arbitration and initiates recourse to arbitration under the UNCITRAL Rules of Arbitration.

Pursuant to Article 1121 of the NAFTA, Methanex consents to arbitration in accordance with the procedures set out in the NAFTA. Methanex hereby waives its rights to initiate or continue before any administrative tribunal or court, or other dispute settlement procedures, any proceedings with respect to the within measure that is alleged to be a breach referred to in Article 1116, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the laws of the United States of America. Attached hereto as Schedule “1” is the consent and waiver of Methanex.

Pursuant to Article 1119 of the NAFTA, Methanex served its Amended Notice of Intent to Submit a Claim to Arbitration on July 2, 1999.

### **DEMAND**

Methanex hereby demands that the dispute between it and the Respondent be referred to arbitration under the UNCITRAL Rules of Arbitration.

### **PARTIES**

Name and Address of Claimant/Investor:

METHANEX CORPORATION  
1800 Waterfront Centre  
200 Burrard Street  
Vancouver, British Columbia  
Canada V6C 3M1

Name and Address of Respondent/Party:

UNITED STATES OF AMERICA  
Department of State  
The Executive Director  
Office of the Legal Advisor  
2201 C. Street N.W.  
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USA 20520

### **ARBITRATION CLAUSE/AGREEMENT**

Methanex invokes Section B of Chapter 11 of the NAFTA, and specifically relies upon Articles 1116, 1120 and 1122 of the NAFTA as authority for the arbitration.

### **REFERENCE TO CONTRACT**

The dispute is in relation to Methanex's investment in the United States of America ("USA") and the damages that have arisen out of the USA's breach of its obligations under Chapter 11 of the NAFTA.

### **GENERAL NATURE OF THE CLAIM**

Methanex alleges that the USA has breached, and continues to breach, its obligations under Chapter 11, Section A of the NAFTA, including the following:

- i. Article 1105 – Minimum Standard of Treatment; and
- ii. Article 1110 – Expropriation and Compensation.

The relevant portions of the NAFTA include:

***Article 1105: Minimum Standard of Treatment***

1. *Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.*

**Article 1110: Expropriation and Compensation**

1. *No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment (“expropriation”), except:*
  - (a) *for public purpose;*
  - (b) *on a non-discriminatory basis;*
  - (c) *in accordance with due process of law and Article 1105(1); and*
  - (d) *on payment of compensation in accordance with paragraphs 2 through 6.*
2. *Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (“date of expropriation”), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.*
3. *Compensation shall be paid without delay and be fully realizable.*

**Article 1116: Claim by an Investor of a Party on Its Own Behalf**

1. *An investor of a Party may submit to arbitration under this Section a claim that another Party has breached an obligation under:*
  - (a) *Section A or Article 1503(2) (State Enterprises), or*
  - (b) *Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party’s obligations under Section A**and that the investor has incurred loss or damage by reason of, or arising out of, that breach.*
2. *An investor may not make a claim if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.*

**Facts and History of the Claim**

Methanex is a producer and marketer of methanol. Methanex Methanol Company (“Methanex US”) and Methanex Fortier, Inc. (“Methanex Fortier”) are investments in the

USA wholly owned, indirectly, by Methanex. Methanex US purchases methanol from Methanex for marketing in the North American market. Methanex Fortier is a methanol production facility located in Fortier, Louisiana.

Methanol is a liquid petrochemical made from feedstocks containing carbon and hydrogen. Approximately two-thirds of the methanol produced is used in the production of formaldehyde, acetic acid and a variety of other chemical intermediates which are used for the manufacture of a wide range of products including plywood, particleboard, foams, resins and plastics. The remaining one-third of methanol produced is for the fuel sector, largely for use in methyl tertiary-butyl ether (“MTBE”).

The principal uses of MTBE are as an oxygenate and as a source of octane for gasoline. As an oxygenate, the clean-burning properties of MTBE significantly reduce harmful emissions from internal combustion engines such as those used in motor vehicles. As well as providing significant emissions and air quality benefits, MTBE gives early warning of the release of gasoline into the environment due to its solubility in water. When gasoline containing MTBE is discharged into the environment some of the MTBE may dissolve in the surrounding groundwater. A resultant plume of MTBE in water often travels faster than other gasoline components in the environment due to groundwater movement, and is more readily apparent as it has a characteristic taste and smell that is detectable at extremely low threshold levels.

In the mid 1990s, trace amounts of MTBE began to appear in ground and surface waters in the State of California due to the release of gasoline into the environment. Gasoline was released primarily as a result of the State of California failing to enforce its environmental legislation relating to underground storage tanks (“USTs”) and water resource protection, as well as local municipalities permitting the operation of inefficient two stroke engines on drinking water reservoirs.

Rather than address the primary issues causing gasoline releases into the environment, the government of California proposed legislation that arbitrarily called for a ban on the

use of MTBE in gasoline. After debate by the California Senate and Assembly, an amended bill was chaptered on October 9, 1997 (the “Bill”). The Bill called for the University of California to do a thorough and objective evaluation of the human health and environmental risks and benefits, if any, of the use of MTBE, ethyl tertiary-butyl ether (“ETBE”), tertiary amyl methyl ether (“TAME”) and ethanol, in gasoline, and to ensure that the air, water quality, and soil impacts of the use of MTBE were fully mitigated.

The University of California received \$500,000 from the State of California to conduct a study and assessment of the human health and environmental risks and benefits, if any, associated with the use of MTBE, as compared to, ETBE, TAME, and ethanol (the “UC Report”). The UC Report was submitted to the Governor of the State of California (the “Governor”) and then subjected to peer review. The public was also given the opportunity to comment on the UC Report and the use of MTBE in gasoline.

On March 25, 1999 the Governor, relying upon the UC Report, issued an Executive Order (the “Executive Order”) which provided (among other things) for the removal of MTBE from gasoline at the earliest possible date, but not later than December 31, 2002.

The UC Report was deficient in that it:

- i. failed to do a proper risk characterization and failed to complete the mandated comparison of the risks of MTBE use with the risks posed by other ethers which have similar chemical and environmental behaviour;
- ii. was substantially underfunded, used an extraordinarily scant database, and relied on broad assumptions to determine the scope of the MTBE issue;
- iii. contained a badly flawed exposure assessment and cost/benefit analysis;
- iv. failed to adequately discuss alternative solutions and remediation; and
- v. ignored the public testimony and peer review.

As a result, the UC Report reached unfounded conclusions and offered unjustifiable recommendations.

In the Executive Order, the Governor stated that “the findings and recommendations of the UC report, the public testimony and the regulatory agencies are that, while MTBE has provided California with clean air benefits, *because of leaking underground fuel storage tanks* MTBE poses an environmental threat to groundwater and drinking water” (emphasis added). On this basis, the Governor certified that “on balance, there is significant risk to the environment from using MTBE in gasoline in California”. The Executive Order, (among other things), called for the California Energy Commission in consultation with the California Air Resources Board, to develop a timetable for the removal of MTBE from gasoline at the earliest possible date, but not later than December 31, 2002.

The California State Legislature and various state agencies have, since March 25, 1999, taken measures to implement the Executive Order “for the removal of MTBE from gasoline at the earliest possible date.”

### **Particulars of the Claimed Losses**

The Bill and the resulting Executive Order collectively, is a “measure” under the provisions of Article 201 of the NAFTA. The measure taken by the Governor:

- i. was arbitrary and based on a process which lacked substantive fairness;
- ii. penalizes and bans only one component of gasoline;
- iii. failed to consider alternative measures to mitigate the effects of gasoline releases into the environment;
- iv. resulted from the failure or delay in enacting or enforcing legislation to reduce or eliminate gasoline releases into the environment;
- v. failed to take proper consideration of the legitimate interests of Methanex, Methanex US and Methanex Fortier; and,
- vi. goes far beyond what is necessary to protect any legitimate public interest.

The measures taken by the State of California Legislature and the Governor have and will end Methanex US' business of selling methanol for use in MTBE in California. The measures have resulted in a current oversupply in the methanol industry which will be extended in time and will result in the extended closure of the Fortier plant. This constitutes a substantial interference and taking of the business of Methanex US and Fortier, and a substantial interference and taking of Methanex's investment in Methanex US and Fortier. These measures are both directly and indirectly tantamount to an expropriation and have resulted in an impairment and deprivation of Methanex US' and Fortier's economic value. Further, the measure has established a flawed precedent which is being adopted and implemented by legislative actions calling for a reduction or ban of MTBE in other states of the United States.

No compensation has been offered or paid by the USA pursuant to Article 1110 of the NAFTA, either before or after the Amended Notice of Intent to Submit a Claim to Arbitration was served by Methanex.

As methanol is a commodity, and MTBE represents approximately 30% of the world demand for methanol, the measure will cause a general depression of the global methanol price. Methanex will suffer losses as a result thereof.

The ban on MTBE has caused and will cause losses including, *inter alia*:

- i. loss to Methanex, Methanex US and Fortier of a substantial portion of their customer base, goodwill and market for methanol in California and elsewhere;
- ii. losses to Methanex, Methanex US and Fortier as a result of the decline in the global price of methanol;
- iii. loss of return to Methanex, Methanex US and Fortier on capital investments they have made in developing and serving the MTBE market;
- iv. loss to Methanex due to the increased cost of capital; and



- v. loss to Methanex of a substantial amount of its investment in Methanex US and Fortier.

**RELIEF SOUGHT and AMOUNTS CLAIMED**

Methanex claims:

- a) damages under the provisions of Article 1116 for breach of Articles 1105 and 1110 of the NAFTA in the amount of US \$970,000,000.00;
- b) its costs of this arbitration including without limitation, expert and attorney fees and disbursements plus any Canadian Goods and Services tax payable thereon; and
- c) interest on the sums claimed in subparagraphs (a) and (b) until paid.

**ARBITRATORS**

Pursuant to Article 1123 of the NAFTA, the number of arbitrators shall be three.

Methanex hereby nominates J. William Rowley, Q.C. as its party-appointed arbitrator and it proposes that the arbitration be held, and that the award be rendered, at Toronto, Ontario, Canada.

**STATEMENT OF CLAIM**

Attached hereto as Schedule "2" is the Methanex Statement of Claim.

DATE OF ISSUE: December 3, 1999

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