

IN THE ARBITRATION UNDER CHAPTER 11  
OF THE NORTH AMERICAN FREE TRADE AGREEMENT  
AND UNDER THE UNCITRAL ARBITRATION RULES  
BETWEEN

-----x	:
METHANEX CORPORATION,	:
Claimant/Investor,	:
and	:
UNITED STATES OF AMERICA,	:
Respondent/Party.	:
-----x	:
	Volume 3

SECOND FINAL AMENDED TRANSCRIPT

Wednesday, June 9, 2004

The World Bank  
1818 H Street, N. W.  
MC Building  
Conference Room 13-121  
Washington, D. C.

The hearing in the above-entitled matter  
came on, pursuant to notice, at 9:30 a.m. before:

- V. V. VEEDER, Q. C., President
- PROF. W. MICHAEL REISMAN, Arbitrator
- J. WILLIAM ROWLEY, Q. C., Arbitrator

Also Present:

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Tribunal Legal Secretary

MARGRETE STEVENS,  
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Tribunal Administrative Secretary

Court Reporter:

0609 Day 3

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1                                   P R O C E E D I N G S  
2                   PRESIDENT VEEDER: Good morning, ladies  
3 and gentlemen. It's day three of the hearing.  
4 Before we hand the floor to the United States for  
5 it to resume its oral submissions today, we shall  
6 record that we received a letter from the claimant,  
7 dated the 9th of June, 2004, to which we will  
8 return later, but I take it a copy of that has been  
9 received by the United States?

10                   MR. BETTAUER: Yes.

11                   PRESIDENT VEEDER: The floor is yours,  
12 Mr. Bettauer.

13                   MR. BETTAUER: Thank you, Mr. President,  
14 members of the Tribunal.

15                   This morning, the United States will  
16 address four topics. We will start by addressing  
17 Methanex's three claims of breach. The first claim  
18 of breach is Methanex's claim that it has been  
19 denied national treatment under NAFTA Article 1102.  
20 Our presentation on national treatment will be by  
21 two speakers, Mr. Clodfelter and Ms. Menaker.

1                   Mr. Clodfelter will show that California  
2 accorded identical treatment to U.S.-owned and  
3 Canadian-owned investments in like circumstances.

4 He will demonstrate that this conclusively refutes  
5 Methanex's claim under Article 1102.

6 Ms. Menaker will then show why Methanex's  
7 varied arguments concerning the general agreement  
8 on tariffs and trade and other WTO agreements are  
9 irrelevant to Article 1102 and support, in fact,  
10 the opposite conclusion.

11 Our next topic will be Methanex's claim  
12 that it has been denied treatment in accordance  
13 with international law as required by 1105(1).

14 Ms. Guymon will address this claim. She will  
15 demonstrate that Methanex has failed to articulate  
16 any basis in international law for the claim and  
17 has failed to prove the allegations it did make.

18 We will next turn to Methanex's claim of  
19 expropriation without compensation, allegedly in  
20 violation of NAFTA Article 1110. Ms. Menaker will  
21 address this claim. She will show that there is no

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1 factual evidence of any taking here. She will also  
2 show that Methanex's claim fails on legal grounds.

3 After reviewing these reasons why  
4 Methanex's claims are without merit, we will turn  
5 to our final topic for the day, yet one more reason  
6 why Methanex's claim must be dismissed. That  
7 reason is the lack of appropriate evidence of  
8 ownership of investments in the United States  
9 offered by Methanex. Ms. Toole will address this  
10 topic. She will show that Methanex has filed no  
11 authoritative proof of ownership of any investments

12 in the United States. This failure is also fatal  
13 to all of Methanex's claims.

14 I will then conclude the first-round U. S.  
15 presentation. We will try to conclude before  
16 lunch, as we indicated last night.

17 With that said, Mr. President, I ask you  
18 now to give the floor to Mr. Clodfelter.

19 PRESIDENT VEEDER: Thank you very much.

20 Mr. Clodfelter.

21 MR. CLODFELTER: Thank you, Mr. President,

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1 members of the Tribunal.

2 Methanex has not demonstrated and cannot  
3 demonstrate a violation of NAFTA's national  
4 treatment provision under the terms of that  
5 provision as properly applied.

6 Methanex's arguments never quite come to  
7 grips with the terms of that provision. I've shown  
8 it on the screen, but I will dispense with reading  
9 it since I think we're all very familiar with it  
10 now.

11 Instead of dealing with the text, Methanex  
12 relies on provisions of the general agreement on  
13 tariffs and trade, an agreement that has no  
14 application here whatsoever. It has read into  
15 Article 1102 exceptions and burdens that are  
16 nowhere to be found in the provision's text. It  
17 continues to rely on authorities that actually  
18 contradict its position, and it fails to cite any

19 relevant authority in support of its view.  
20 Methanex has proceeded in this manner  
21 because if one does read Article 1102 as it should

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1 be read, that is in accordance with accepted  
2 principles of treaty interpretation, it becomes  
3 clear that the facts in this case cannot support a  
4 finding of national treatment violation.

5 Now, the parties agree that the first step  
6 in a Chapter 11 national treatment inquiry is to  
7 establish the appropriate comparators; that is, to  
8 identify domestic investors and domestically owned  
9 investments that are in like circumstances with the  
10 claimant and its investors as shown on screen two.

11 After investors and investments in like  
12 circumstances have been identified, it is then  
13 possible to evaluate whether the claimant or its  
14 investments received treatment that, as shown on  
15 screen three, was less favorable than that accorded  
16 to those domestic investors and investments.

17 In my presentation this morning, I will  
18 begin by showing that U.S. methanol investors and  
19 U.S.-owned methanol investments are the appropriate  
20 comparators for the treatment accorded to Methanex  
21 and its investments because only those companies

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1 are in like circumstances with Methanex and its

2 investments within the meaning of Article 1102.

3           Then I will show that to the extent that  
4 they have been accorded treatment at all, Methanex  
5 and its investments have been accorded precisely  
6 the same treatment as those U.S. methanol  
7 producers, and that, therefore, there can be no  
8 national treatment violation.

9           Second, I will explain why Methanex's  
10 argument that it and its investments should be  
11 compared to U.S.-owned ethanol producers and  
12 marketers is wrong. I will demonstrate that such  
13 an approach would not serve Article 1102's purpose  
14 of addressing nationality-based discrimination, and  
15 is contradicted by relevant authorities, including  
16 the same authorities relied upon by Methanex.

17           Third, and finally, I will show that  
18 Methanex's contention that it should be compared to  
19 U.S. ethanol producers, because methanol and  
20 ethanol compete, is wrong on both factual and legal  
21 grounds.

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1           First, who are the proper comparators for  
2 Methanex and its U.S. investments? Methanex  
3 purportedly owns two investments in the United  
4 States: Methanex-Fortier and Methanex-US.  
5 Methanex-Fortier is a company that owns an idled  
6 methanol plant in Louisiana, and methanol  
7 U.S. -- Methanex-US is a marketing company in Dallas.

8           For purposes of the measures at issue  
9 here, an investment in like circumstances with



10 Methanex-Fortier would be a U.S.-owned company with  
11 a plant that manufactures, or at one time  
12 manufactured, methanol. It is undisputed that, as  
13 we showed in our Amended Statement of Defense,  
14 there are, and were, at the time of the measures,  
15 substantial U.S.-owned methanol plants in the  
16 United States. These plants are clearly in like  
17 circumstances with Methanex-Fortier.

18           Methanex also does not dispute that to the  
19 extent the California ban accorded any treatment at  
20 all to Methanex-Fortier, that treatment was no less  
21 favorable than the treatment that California

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1 accorded to these U.S.-owned methanol plants.

2           Similarly, with respect to Methanex-US, a  
3 domestic investment in like circumstances with that  
4 company would be a U.S.-owned company located in  
5 the United States that marketed methanol to U.S.  
6 customers. Again, the record contains uncontested  
7 evidence demonstrating that there were such  
8 companies.

9           It is also uncontested that, again, to the  
10 extent that the ban accorded any treatment at all  
11 to Methanex-US, that treatment was no less  
12 favorable than that accorded to these U.S.-owned  
13 companies.

14           Finally, Methanex itself is an investor,  
15 and as such, it too is entitled to national  
16 treatment. It is entitled to be treated no less

17 favorably than the U. S. investors that own or  
18 control methanol production and marketing companies  
19 in the United States just described. Methanex  
20 concedes that it has been treated no less favorably  
21 than these U. S. investors.

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1           Thus, the uncontested evidence in the  
2 record establishes that the California ban did not  
3 differentiate between methanol producers,  
4 marketers, or investors on the basis of  
5 nationality. On this record, there can be no  
6 finding of a national treatment violation.

7           But Methanex argues that it and its  
8 investments should be compared not with U. S. - owned  
9 methanol producers, but to U. S. - owned ethanol  
10 producers.

11           The second thing I wanted to do this  
12 morning is show why it would be a misapplication of  
13 Article 1102 to consider Methanex and its  
14 investments to be in like circumstances with  
15 U. S. - owned ethanol producers and marketers and why  
16 no such comparison can provide the basis of a  
17 national treatment violation. Of course, the terms  
18 of a treaty are to be interpreted in light of its  
19 object and purpose, and with respect to national  
20 treatment of investments, the purpose of NAFTA is  
21 clear.

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1 Article 1102 is meant to address  
2 discrimination on the basis of nationality, and  
3 more particularly on the basis of the nationality  
4 of the investor. As the Tribunal in the Loewen  
5 case stated, as can you see on screen four, and I  
6 quote, Article 1102 is directed only to  
7 nationality-based discrimination, and further it  
8 said, it proscribes only demonstrable and  
9 significant indications of bias and prejudice on  
10 the basis of nationality, unquote.

11 Similarly, the Tribunal in the Feldman  
12 case made the same point. As it stated in its  
13 award, which I've shown on screen five, quote, it  
14 is clear that the concept of national treatment as  
15 embodied in NAFTA and similar agreements is  
16 designed to prevent discrimination on the basis of  
17 nationality or by reason of nationality.

18 So, the question is: How does one  
19 determine whether a regulation discriminates  
20 against Canadian investors and their investments on  
21 the basis of those investors' foreign nationality?

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1 In other words, how can it be determined that but  
2 for the investors' nationality, it or its  
3 investments would have received more favorable  
4 treatment from the state?

5 Or phrased yet another way, how can you  
6 isolate the factor of the investors' nationality,  
7 the factor which Article 1102 is designed to

8 eliminate from the treatment accorded to investors  
9 and investments.

10           Clearly, the most accurate way to make  
11 this determination is to compare the treatment  
12 received by the foreign investor and its  
13 investments to the treatment received by a U. S.  
14 investor and U. S. - owned investments that are like  
15 the foreign investor and its investments in all  
16 relevant respects except for nationality of  
17 ownership. Then, if the treatment they receive is  
18 different, a presumption may arise that it was on  
19 account of the difference in nationality.

20           By the same token, if the treatment is  
21 precisely the same, as is the case it here, there

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1 is no discriminatory treatment in violation of  
2 Article 1102.

3           Methanex's analysis, on the other hand,  
4 does not serve NAFTA's purpose of preventing  
5 discriminatory investment treatment on the basis of  
6 nationality. There is no question that ethanol  
7 producers are unlike methanol producers in several  
8 respects. Certainly, there is no dispute that the  
9 differences between U. S. - owned ethanol investors or  
10 U. S. ethanol investors and Canadian methanol  
11 investors is greater than the difference between  
12 U. S. methanol investors and Canadian methanol  
13 investors. Using Methanex's approach of comparing  
14 Canadian methanol investors with U. S. ethanol

15 investors, a Tribunal could not conclude that there  
16 was a discriminatory treatment--that there was  
17 discriminatory treatment on the basis of  
18 nationality as opposed to other factors without  
19 considering other evidence.

20           Expanding the universe of domestic  
21 investors and investments considered to be in like

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1 circumstances with Methanex and its investments,  
2 expanding that universe to include ethanol  
3 producers would thus not be consistent with the  
4 purpose of Article 1102 of prohibiting  
5 discriminatory treatment based on nationality of  
6 ownership alone.

7           Let me try an example. Let's assume that  
8 it could be said that U.S. ethanol producers were  
9 accorded better treatment than Canadian-owned  
10 methanol producers. On the basis of those facts  
11 alone, one could not conclude that the less  
12 favorable treatment was because of the Canadian's  
13 nationality. These assumed facts by themselves  
14 could not rule out the likely possibility that the  
15 difference in treatment was based on differences in  
16 the products manufactured by the two investments.

17           Nor do these assumed facts rule out the  
18 possibility that the Canadian--that Canadian-owned  
19 ethanol producers were accorded the same treatment  
20 as U.S.-owned ethanol producers. And this exposes  
21 the error in Methanex's analysis.

1 Article 1102 is concerned with ensuring  
2 that treatment of investors and investments does  
3 not differ on the basis of the nationality of the  
4 investor. It is not concerned with ensuring that  
5 no differentiation is ever made between different  
6 products. Nor is it concerned with preventing a  
7 state from according different treatment to  
8 domestic investors and investments that are not  
9 similarly situated.

10 The United States may treat its own  
11 methanol investors different from the way it treats  
12 its own ethanol investors. The U.S. must,  
13 therefore, also be permitted to treat U.S. ethanol  
14 investors and Canadian methanol investors  
15 differently as well. Methanex's analytical  
16 framework would deem this impermissible.

17 This approach to the national treatment  
18 analysis was the approach adopted by the Tribunal  
19 in the Pope and Talbot case. On Monday, Mr. Dugan  
20 cited Pope and Talbot at transcript page 30, lines  
21 14 to 19, for the proposition that paragraph three

1 of Article 1102 requires the best treatment  
2 accorded by a state or province to any domestic  
3 investor or investment, and that's true as far as  
4 it goes. But it does not help Methanex's case. As  
5 you can see on the screen, paragraph three of

6 Article 1102 provides that the treatment accorded  
7 by a party under paragraphs one and two means with  
8 respect to a state or province; treatment no less  
9 favorable than the most favorable treatment  
10 accorded, in like circumstances, by that state or  
11 province to investors, and to investments of  
12 investors, of the party of which it forms a part.

13 All that provision does is obligate a  
14 state or province to provide the best of in-state  
15 or out-of-state or in-province or out-of-province  
16 treatment to investors and investments in like  
17 circumstances. For example, the fact that New York  
18 might treat New York investors better than other  
19 U.S. investors, including, say, investors from New  
20 Jersey, is not a defense to an Article 1102 claim.  
21 Canadian investors would be entitled to the

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1 treatment, the more favorable treatment accorded to  
2 the New York investors.

3 But here, of course, Methanex and its  
4 investors were accorded the best treatment accorded  
5 to U.S. methanol producers and U.S.-owned methanol  
6 producers wherever they were in the United States.  
7 That's all that paragraph three does. But even  
8 that analysis depends upon there being a comparison  
9 of investors in like circumstances. Article  
10 1102(3) does not in any way expand the scope of the  
11 like circumstances test.

12 So, Methanex's citation to paragraph three

13 really doesn't help us here. But what is most  
14 curious about Methanex's reliance in the Pope and  
15 Talbot case is that it completely contradicts the  
16 notion that foreign methanol producers are in like  
17 circumstances with U. S. ethanol producers.

18           Mr. President and Mr. Rowley, you may  
19 recall that at the 2001 hearing on jurisdiction we  
20 walked you through the Pope and Talbot Phase II  
21 award's rather complicated analysis on this point

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1 in some detail. I don't propose to go on to such  
2 detail today, and would instead refer you to pages  
3 197 to 202 of the second day's transcript of that  
4 hearing and to paragraph 156 of our rejoinder  
5 brief.

6           In summary, however, the U. S. claimant in  
7 that case challenged Canada's imposition of fees on  
8 softwood lumber exports to the United States.  
9 Canada imposed those fees only on exports from  
10 certain Canadian provinces, including British  
11 Columbia, where the claimant had its investment.  
12 But Canada did not impose such fees on exports from  
13 other provinces such as Quebec.

14           On the like circumstances issue, Canada  
15 argued that the U. S. -owned investment in British  
16 Columbia was in like circumstances with  
17 Canadian-owned softwood lumber exporters in British  
18 Columbia who were subject to the same export fees.  
19 Those Canadian counterparts were like the claimant  
20 in all relevant respects except for nationality of



21 ownership. The U. S. claimant, on the other hand,

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1 argued that its investment should be compared with  
2 Canadian-owned softwood lumber exporters located  
3 throughout Canada, including provinces where the  
4 export fees were not imposed.

5           The Tribunal agreed with Canada in and  
6 disagreed with the U. S. claimant. Because there  
7 were substantial Canadian-owned investors in the  
8 province where claimant was located who were thus  
9 in precisely the same circumstances as claimant and  
10 were charged--had the fee imposed upon them, the  
11 Tribunal held that those companies were the correct  
12 comparators for purposes of Article 1102.

13           As can you see on screen seven, the  
14 Tribunal stated as follows, quote, since the  
15 decision affects over 500 Canadian-owned producers  
16 precisely as it affects the investor--and those are  
17 producers in British Columbia--it cannot be  
18 reasonably said to be motivated by discrimination  
19 outlawed by Article 1102, unquote.

20           And then, in the very next sentence said,  
21 quote, Based on that analysis, the producers in the

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1 noncovered provinces were not in like circumstances  
2 with those in the covered provinces.

3           Now, this conclusion shows two things.

4 First, paragraph three of Article 1102 did not  
5 require treatment like that accorded to  
6 Canadian-owned lumber exporters in the nonfee  
7 provinces, say, like Quebec, because they were not  
8 in like circumstances with Canadian-owned lumber  
9 exporters in British Columbia. Paragraph three's  
10 most favorable treatment requirement was thus  
11 irrelevant in the same way it's irrelevant here.

12           But more importantly, this conclusion  
13 shows that Canadian-owned producers in British  
14 Columbia were the proper comparators because their  
15 circumstances were the closest to Pope and Talbot's  
16 own circumstances except for the all-important  
17 factor of nationality of ownership.

18           Thus, the Pope and Talbot Tribunal's  
19 conclusions served Article 1102's purpose, but  
20 comparing Pope and Talbot's treatment to that  
21 accorded to Canadian-owned investments in the

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1 nonfee provinces would not have served that purpose  
2 of prohibiting nationality-based discrimination.  
3 After all, Canada was entitled to differentiate  
4 between Canadian producers in different locations.  
5 That conclusion is directly analogous to the case  
6 we have here.

7           Just as Pope and Talbot was in like  
8 circumstances with the Canadian-owned British  
9 Columbia exporters because they were in precisely  
10 the same circumstances, Methanex and its

11 investments are in precisely the same circumstances  
12 as U.S.-owned methanol producers and marketers and  
13 their U.S. owners. Thus, not only does the Pope  
14 and Talbot case not support Methanex for the  
15 proposition they cited it for, the case completely  
16 contradicts its like circumstances analysis.

17           The entire rationale of Article 1102, to  
18 prevent discriminatory treatment of investors and  
19 investments on the basis of the investors'  
20 nationality is undermined by Methanex's approach,  
21 and served only by isolating nationality as a

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1 factor, as was done in Pope and Talbot.

2           Let me end this topic by making just one  
3 additional observation. Methanex has failed to  
4 cite a single case that has held that different  
5 products, services, investors, or investments  
6 should be compared as if they were like when there  
7 was an identical domestic industry that received  
8 the same treatment as the claimant. None of the  
9 cases it cites supports its contention that this  
10 Tribunal should ignore those investments that are  
11 in precisely the same circumstances with it, and  
12 instead compare it to investments that produce and  
13 market a different product.

14           Let me turn to the third and final issue I  
15 want to discuss. That's Methanex's claim that it  
16 should, nevertheless, be compared to ethanol  
17 producers because it and its investments are in a  
18 competitive relationship vis-a-vis ethanol

19 producers. This contention is also baseless.

20 First, as Mr. Legum showed yesterday,

21 ethanol and methanol do not compete with one

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1 another in any sense relevant here. Methanol,  
2 unlike ethanol, is not and cannot be used as an  
3 oxygenate additive in gasoline. Nor does methanol  
4 compete with ethanol in any of the gasoline markets  
5 identified by Methanex. Thus, on factual grounds  
6 alone, Methanex's argument fails. But it also  
7 fails on legal grounds.

8 An investor is not necessarily in like  
9 circumstances with another investor just because  
10 those investors may be in a competitive  
11 relationship with one another. The Pope and Talbot  
12 case illustrates this point very well. The  
13 Tribunal there was not concerned in the least with  
14 the fact that the Canadian-owned exporters in the  
15 nonfee provinces benefited by increasing sales at  
16 the expense of companies like the claimant's  
17 company that were in provinces subject to the  
18 export fee. What mattered was the difference in  
19 treatment was not based on nationality. And this  
20 was determined by comparing the claimant with  
21 Canadian investors who were in precisely the same

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1 circumstances as it was, rather than with other

2 Canadian investors who are in the same economic  
3 sector and who were competitors selling the exact  
4 same product, lumber, but were not in the same  
5 circumstances.

6           The case of Feldman versus Mexico also  
7 opposes the error in Methanex's reasoning. In that  
8 case, the claimant was a reseller of cigarettes.  
9 He challenged a regulation that denied resellers of  
10 cigarettes a rebate that was made available to  
11 companies that, because they were manufacturers,  
12 were direct sellers of cigarettes. The Tribunal  
13 denied claimant's national treatment claim, and  
14 once again, in doing so, the Tribunal compared the  
15 treatment accorded to the claimant with that  
16 accorded to Mexican-owned resellers of cigarettes,  
17 and not to Mexican direct sellers of the  
18 cigarettes, even though they were obviously direct  
19 competitors.

20           As is the case here, those resellers were  
21 like claimant in all respects but for their

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1 nationality. The Tribunal determined that they  
2 were the appropriate comparators, not the competing  
3 direct sellers, and found that there was no  
4 difference in treatment. If competition was the  
5 key to determining like circumstances, then  
6 certainly claimant in that case would have been  
7 deemed to be in like circumstances with all  
8 cigarette sellers, whether they were manufacturers

9 or resellers. But they weren't because competition  
10 is not the key.

11 Let me try an example on this point.  
12 Imagine there are two directly competitive  
13 businesses in the United States that both produce  
14 widgets of exactly the same design. One business  
15 is U.S.-owned, and the other is Canadian owned.  
16 But as it happens, the U.S. owners structure their  
17 widget company as a corporation, while the Canadian  
18 owners structure theirs as a general partnership.

19 Assume that both companies' widgets turned  
20 out to be defective and both are sued in U.S.  
21 courts for injuries caused by those defects. The

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1 U.S. owners will be shielded from liability as  
2 shareholders, and liability would be limited to the  
3 corporation's assets. The Canadian owners,  
4 however, as general partners of a partnership, will  
5 themselves bear personal liability.

6 Now, no Tribunal could find on the basis  
7 of these facts that the U.S. laws that accord  
8 limited liability to corporations but not to  
9 partnerships violate national treatment guarantees  
10 by discriminating against the Canadian investors  
11 here. Notwithstanding the fact that the  
12 investments involved, that is the two widget  
13 companies directly competed with one another in the  
14 sale of an identical product they would not be  
15 considered to be in like circumstances with one  
16 another for purposes of determining national

17 treatment. Rather, the Canadian-owned manufacturer  
18 would be deemed to be in like circumstances with  
19 U. S. - owned partnerships owning widget companies.

20 Assuming that those partnerships would be  
21 similarly treated with respect to the imposition of

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1 personal liability, there would be no national  
2 treatment violation. This example demonstrates  
3 again why Methanex's contention that competition is  
4 the key to determining like circumstances is simply  
5 wrong. Indeed, even Methanex's own authorities do  
6 not support its own contention.

7 For example, while it is true as cited by  
8 Methanex that the Tribunal in the S. D. Myers case  
9 mentions the ability to take away customers through  
10 price competition, it does not, as Methanex  
11 implies, make such competitive status the lynchpin  
12 of its like circumstances analysis. This can be  
13 seen by looking at the passages in the S. D. Myers  
14 award that Methanex cites.

15 In its Tab 2 from Monday, and this is  
16 discussed at transcript pages 14, line 18, through  
17 page 16, line six, Mr. Dugan quoted from the  
18 language in paragraph 250 of the Award, which you  
19 can see highlighted in screen eight, and that  
20 passage stated, quote, The concept of like  
21 circumstances invite an examination of whether a

1 nonnational investor complaining of less favorable  
2 treatment is in the same sector as the national  
3 investor. The Tribunal takes the view that the  
4 word "sector" has a wide connotation that includes  
5 the concept of economic sector and business sector,  
6 unquote.

7           Then he quoted from language in paragraph  
8 251 of the Award, also highlighted in that screen,  
9 where the Tribunal said, quote, SDMI was in a  
10 position to attract customers that might otherwise  
11 have gone to the Canadian operators because it  
12 could offer more favorable prices and because it  
13 had extensive experience and credibility, unquote.  
14 But Methanex did not show you the other language of  
15 those paragraphs, which made clear that competitive  
16 status is not the key factor in determining like  
17 circumstances.

18           For example, as I have highlighted in  
19 screen nine, in the same paragraph 250, the  
20 Tribunal also said, and I quote, The Tribunal  
21 considers that the interpretation of the phrase

1 "like circumstances" in Article 1102 must take into  
2 account the general principles that emerge from the  
3 legal context of the NAFTA, including both its  
4 concern with the environment and the need to avoid  
5 trade distortions that are not justified by  
6 environmental concerns. The assessment of like



7 circumstances must also take into account  
8 circumstances that would justify governmental  
9 regulations that treat them differently in order to  
10 protect the public interest, end quote. Thus, the  
11 S. D. Myers Tribunal was mindful that likeness of  
12 circumstances had to take into account just the  
13 kind of concerns that motivated California in  
14 dealing with MTBE.

15           Equally important, although as I said, the  
16 Tribunal did mention SDMI's ability to take away  
17 customers, Methanex left out the context of that  
18 conclusion. In the two sentences in paragraph 251  
19 immediately before the sentence relied upon by  
20 Methanex, the Tribunal said, as can you see on the  
21 screen, quote, screen 10, actually, From the

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1 business perspective, it is clear that SDMI and  
2 Myers Canada were in like circumstances with  
3 Canadian operators such as Chem-Security and  
4 Cintech. They were all engaged in providing PCB  
5 waste remediation services, end quote. In other  
6 words, SDMI and Myers Canada were in like  
7 circumstances with Canadian operators because they  
8 performed the exact same service.

9           So, even in the S. D. Myers case, the  
10 ability to take away customers, that is being in a  
11 directly competitive relationship was only a factor  
12 because the U. S. and Canadian investments were  
13 already in the same circumstance, exactly the same  
14 circumstance. Under this reasoning, the proper

15 comparators here for Methanex and its investments  
16 are U.S. methanol producers and their owners, not  
17 ethanol producers.

18           Thus, contrary to Methanex's contention,  
19 competition is not the key to determining like  
20 circumstances. Isolating the factor of nationality  
21 of ownership is the key. Thus, even if they were,

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1 in fact, competitors, methanol--foreign methanol  
2 producers are not in like circumstances with U.S.  
3 ethanol producers.

4           Based on the uncontested facts in this  
5 case, no national treatment violation can be found.  
6 There are substantial U.S. methanol investors and  
7 U.S.-owned methanol manufacturers and marketers.  
8 All of these U.S. entities were accorded precisely  
9 the same treatment as was Methanex and its U.S.  
10 investments to the extent they were accorded  
11 treatment at all. On the basis of this record,  
12 there could be no doubt that the California ban did  
13 not differentiate between investors and investments  
14 on the basis of nationality. Where there is no  
15 differentiation on the basis of nationality of  
16 ownership, there is no discriminatory treatment.  
17 Methanex's Article 1102 claim should be dismissed.

18           And unless there are any questions,  
19 Mr. President, I will turn the floor over to  
20 Ms. Menaker.

21           PRESIDENT VEEDER: Thank you. We have no

1 questions at this stage. Ms. Menaker.

2 MS. MENAKER: Thank you.

3 Mr. President, members of the Tribunal, I  
4 will now conclude the United States' s presentation  
5 on Article 1102. My colleague, Mr. Clodfelter, has  
6 just explained why Methanex' s national treatment  
7 claim should be dismissed. He demonstrated that to  
8 the extent they were treated at all, Methanex and  
9 its investments were accorded precisely the same  
10 treatment as the U. S. investors and U. S.  
11 investments in like circumstances.

12 Because Methanex continues to rely on GATT  
13 jurisprudence in an effort to establish its  
14 national treatment claim, I will now discuss this  
15 aspect of Methanex' s claim. I will first  
16 demonstrate why that jurisprudence should not be  
17 applied to a NAFTA Article 1102 claim. I will then  
18 show that even if the GATT analysis that Methanex  
19 advocates were applied here, Methanex' s claim would  
20 still fail.

21 Finally, I will explain why Methanex' s

1 claims premised on California' s interest in  
2 studying the feasibility of developing an in-state  
3 ethanol industry do not establish a national  
4 treatment violation.

5           The GATT's like products analysis does not  
6 apply in an Article 1102 national treatment claim.  
7 The GATT and the NAFTA of course, are different  
8 treaties. Article 1102 of the NAFTA refers to  
9 treatment in like circumstances of investors and  
10 investments. As I've shown on the screen, however,  
11 GATT Article 11--excuse me, GATT Article III,  
12 paragraph four, on the other hand, refers to the  
13 treatment of like products.

14           Even when the same phrase is used in  
15 different places within the same treaty, those  
16 phrases may be interpreted differently. In fact,  
17 GATT jurisprudence provides that meaning of the  
18 phrase like products may differ, depending on which  
19 paragraph of Article III one is interpreting.

20           Certainly, then, there is no basis to  
21 conclude that a different phrase that appears in

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1 two different treaties has the same meaning. As  
2 the international Tribunal in the OSPAR Convention  
3 case has observed, and I've placed this slide and  
4 in your packet, and I quote, The application of  
5 international law rules on interpretation of  
6 treaties to identical or similar provisions of  
7 different treaties may not yield the same results,  
8 having regard to, inter alia, differences in the  
9 respective contexts, objects and purposes,  
10 subsequent practice of the parties, and travaux  
11 preparatoires, end quote.

12           If any more evidence were needed, the

13 Tribunal need only to look to provisions in other  
14 Chapters of the NAFTA. Article 301(2) of the NAFTA  
15 that deals with trade in goods, for example, does  
16 not use--does use the phrase, and I quote, like,  
17 directly competitive, or substitutable goods, end  
18 quote.

19           And Article 301(1) expressly refers to  
20 Article III of the GATT. If the NAFTA parties had  
21 wished for a like products analysis to be used in a

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1 Chapter 11 national treatment claim, they would  
2 have similarly used that language in Article 1102,  
3 but they did not. This is no surprise, since the  
4 object and purpose of an investment chapter is  
5 different from the object and purpose of an  
6 agreement that governs trade in goods. The  
7 ordinary meaning of the term "like products and  
8 like circumstances" is also different.

9           The inquiry in a GATT Article III,  
10 paragraph four, case narrowly focuses on products  
11 and asks whether those products are like. Methanex  
12 has argued that if it meets the GATT test, then it  
13 must necessarily meet what it concedes to be the  
14 broader national treatment test of Chapter 11.

15           But quite the opposite is the case.  
16 NAFTA's national treatment provision is broader in  
17 the sense that it takes into account a whole host  
18 of factors in order to determine whether investors  
19 and investments are in like circumstances. While

20 it may be necessary to demonstrate only that  
21 products are like to meet the GATT test, such a

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1 showing may be insufficient or even irrelevant to a  
2 national treatment analysis. Mr. Clodfelter just  
3 provided several examples where this was, indeed,  
4 the case.

5           Just to take one example, in the Feldman  
6 case, the products sold by the investments that  
7 were being compared were identical. They were both  
8 cigarettes. Yet the enterprises were not in like  
9 circumstances. The factors that need to be taken  
10 into account in a like circumstances analysis will  
11 vary, depending on the nature of the challenged  
12 measure. It is precisely because the national  
13 treatment analysis must take into account factors  
14 other than the products manufactured or sold by the  
15 claimant that application of a GATT analysis to an  
16 Article 1102 claim doesn't work.

17           It is, therefore, not surprising that all  
18 three of the NAFTA parties agree that GATT  
19 jurisprudence is not applicable to a national  
20 treatment claim. That concurrence can be found in  
21 the most recent Article 1128 submissions filed by

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1 both Canada and Mexico.

2           In accordance with customary international

3 law rules reflected in the Vienna Convention on the  
4 Law of Treaties, this agreement among all of the  
5 parties to a treaty shall be taken into account.  
6 Although we maintain that this Tribunal should not  
7 undergo such an analysis, Methanex has repeatedly  
8 relied on GATT jurisprudence to support its  
9 national treatment claim, and I will now show why  
10 even applying this jurisprudence Methanex and its  
11 investments should not be considered to be in like  
12 circumstances with ethanol producers.

13           First, methanol and ethanol are not like  
14 products. The factors that are often considered by  
15 WTO panels when undertaking a like products  
16 analysis are the following, and I have placed this  
17 on your screen and in your packet as well. They  
18 are first the properties, nature, and qualities of  
19 the products at issue; second, the product's end  
20 uses; third, the consumers' tastes and preferences;  
21 and fourth, the product's tariff classifications.

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1           A WTO panel would not consider any one  
2 factor to be determinative, and I will now discuss  
3 each of these factors in turn. When a WTO panel  
4 looks at this first factor, the property, nature,  
5 and qualities of the products, it examines the  
6 physical attributes of the goods in question.

7           It is undisputed that methanol and ethanol  
8 are chemically different. The production processes  
9 for these two chemicals are also dissimilar.

10 Generally speaking, ethanol is produced from

11 fermenting corn. Methanol, on the other hand, is  
12 produced from methane, the primary component of  
13 natural gas. Given this uncontested evidence, a  
14 WTO panel would likely conclude that the  
15 properties, nature, and qualities of methanol and  
16 ethanol are not like.

17           The second factor is end use. Ethanol, as  
18 we all know, is used as an oxygenate additive in  
19 gasoline. While methanol has multiple end uses, as  
20 my colleagues have demonstrated and as our expert  
21 reports make clear, methanol is not, and cannot, be

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1 used as an oxygenate additive in gasoline. For the  
2 purposes of this measure, therefore, ethanol and  
3 methanol do not share the same end use.

4           The third factor, consumers' tastes and  
5 preferences, is meant to ascertain whether  
6 consumers of the products differentiate between the  
7 products or whether they would use them  
8 interchangeably. As my colleague, Mr. Legum,  
9 explained yesterday, ethanol and methanol do not  
10 compete in any of the gasoline markets identified  
11 by Methanex. Thus, for purposes of a GATT  
12 analysis, consumers would differentiate between  
13 purchases of ethanol and methanol. This factor  
14 also warrants against considering these products  
15 like.

16           And finally, it is undisputed that ethanol  
17 and methanol have different tariff classifications.



18 Consequently, even if one were to apply this GATT  
19 analysis, which the United States contends would  
20 not be appropriate here, as can you see from the  
21 screen, this would result in a finding that ethanol

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1 and methanol were not like products.

2           now, Methanex takes issue with only one  
3 aspect of this analysis. It argues that methanol  
4 provides the so-called oxygenating element in MTBE,  
5 and therefore, methanol and ethanol should be  
6 considered like products. However, MTBE, and not  
7 methanol, provides the oxygenating element in  
8 gasoline. As was made clear in the First Partial  
9 Award, MTBE and not methanol competes with ethanol.

10           Methanex's argument ignores the inherent  
11 distinction between an ingredient and a final  
12 product. Chevron Texaco aptly noted this  
13 distinction on its Web site which provides, and I  
14 provided the language for you on your screen, and I  
15 quote, Although made from methanol, MTBE does not  
16 have a significant amount of free methanol and does  
17 not have methanol properties. As a comparison,  
18 water is made from hydrogen and oxygen, but water  
19 is very different from either hydrogen or oxygen.

20           Now, assume, however, for the sake of  
21 argument that methanol does provide the so-called

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1 oxygenating element in MTBE. Under a GATT  
2 analysis, one would then need to determine whether  
3 MTBE and ethanol were like products. As we've  
4 shown in our written submissions, the answer to  
5 that question is also no.

6 I will now briefly discuss each of those  
7 four factors to explain why this is the case. And  
8 again, you may follow along on the screen or in  
9 your slides if you choose to do so.

10 First, MTBE and ethanol do not have the  
11 same nature, qualities, or property. In fact, MTBE  
12 and ethanol have very different properties. MTBE  
13 is an ether, while ethanol is an alcohol. Because  
14 of its chemical properties, MTBE attaches itself to  
15 water particles and travels extremely quickly  
16 through water. MTBE is resistant to  
17 biodegradation. At extremely low quantities in  
18 water, MTBE has a very disagreeable and potent  
19 taste and smell. It was MTBE's unique properties  
20 that caused California to ban the use of MTBE in  
21 gasoline. Thus, MTBE and ethanol should not be

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1 considered to have the same properties, nature, and  
2 qualities.

3 Moving on to the second factor, for  
4 purposes of this case, ethanol and MTBE would be  
5 considered to share a common end use, since they  
6 are both used as an oxygenate additive in gasoline.

7 The third factor, consumer tastes and  
8 preferences, would not be met here. Just because

9 products share the same end use does not mean that  
10 consumers don't differentiate between them. For  
11 example, wallpaper and paint have the same end use,  
12 they are both used as wall coverings, consumers,  
13 however, do not consider wallpaper and paint to be  
14 interchangeable.

15 Consumers do, indeed, differentiate  
16 between purchases of ethanol and MTBE. First of  
17 all, methanol and MTBE are not fungible. Federal  
18 and California regulations prohibit the mixing of  
19 gasoline containing MTBE with gasoline containing  
20 ethanol. And that citation can be found--support  
21 for that proposition can be found in 25 JS Tab 5 in

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1 the California Air Resources Board advisory.

2 Second, different distribution systems are  
3 required for the two types of gasoline. Because  
4 ethanol gets pulled into water and is commonly  
5 found--that is commonly found in pipelines and  
6 tanks, it can't be transported via pipeline.  
7 Gasoline containing MTBE is commonly transported  
8 via pipeline.

9 Third, refineries and distribution  
10 terminals cannot interchangeably handle gasoline  
11 with MTBE and gasoline with ethanol. Significant  
12 infrastructure changes are required before a  
13 refinery or a distribution terminal can switch from  
14 providing gasoline with MTBE to providing gasoline  
15 with ethanol, and support and further elaboration

16 on this point can be found in Mr. Bruce Burke's  
17 rejoinder report at paragraph 24.

18           Finally, over the past several years,  
19 there has been a flood of litigation against MTBE  
20 producers and gasoline retailers for MTBE  
21 groundwater contamination. For instance, in a very

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1 well publicized action, several major refiners paid  
2 approximately \$70 million to the South Tahoe Public  
3 Utility District to settle litigation. In Santa  
4 Monica where several of the public wells were shut  
5 down because of MTBE contamination, gasoline  
6 refiners and MTBE producers paid over \$90 million  
7 to the city and agreed to pay for the costs of  
8 removing MTBE from affected wells, which is  
9 estimated to cost in the range of \$500 million.

10           These are just two well-known actions in  
11 California. There are several dozen pending  
12 lawsuits nationwide today. A partial list of these  
13 suits can be found in footnote 553 to our Amended  
14 Statement of Defense.

15           Understandably, oil companies and gasoline  
16 refiners are sensitive to the huge potential  
17 litigation risks attendant with the continued sale  
18 of MTBE, and many have chosen to stop selling  
19 gasoline with MTBE as a result. The record  
20 contains overwhelming evidence that consumers do,  
21 indeed, differentiate between gasoline containing

1 MTBE and gasoline containing ethanol.

2           Turning to the fourth and final factor,  
3 there is no dispute that MTBE and ethanol have  
4 different tariff classifications. Looking at this  
5 chart that I have put on the screen and in your  
6 slides, the only check that appears is the one  
7 indicating that MTBE and ethanol share a common end  
8 use for purposes of this case. This factor,  
9 however, is relevant to a comparison of MTBE and  
10 ethanol.

11           As we all know, Methanex produces and  
12 markets methanol and not MTBE. A comparison  
13 between MTBE and ethanol is thus not warranted  
14 here. In any event, an affirmative response on  
15 this one factor would not lead to a finding of  
16 likeness if GATT jurisprudence were applied. And  
17 the asbestos case before the WTO appellate body  
18 illustrates this point well.

19           In that case, the products at issue were  
20 found not to be like, despite uncontroverted  
21 evidence that products shared the same end use and

1 competed with one other. The nature, quality, and  
2 properties of the products containing asbestos were  
3 shown to be responsible for adverse health effects  
4 in users of those products. Aware of these  
5 effects, consumers distinguished between products  
6 containing asbestos and those that did not, despite

7 the fact that products could be used for the same  
8 end use or for the same purpose.

9           And that is the case here. Despite their  
10 common use as oxygenate additives for gasoline,  
11 MTBE has been shown to cause groundwater  
12 contamination because of its nature, qualities, and  
13 properties. Because of the groundwater  
14 contamination, consumers of gasoline do  
15 differentiate between gasoline containing MTBE and  
16 gasoline containing ethanol. This evidence would  
17 warrant a finding that ethanol and MTBE were not  
18 like products were a GATT analysis applied.

19           Before moving on to my last point, I will  
20 briefly address Methanex's misplaced reliance on  
21 GATT, Article XX. That Article provides an

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1 exception under the GATT for measures that are  
2 necessary to protect human, animal, or plant life,  
3 or health, or relate to the conservation of  
4 exhaustible natural resources. By relying on this  
5 provision, Methanex hopes to shift to the United  
6 States the burden of proving an exception to  
7 national treatment. But GATT Article XX has no  
8 place in a national treatment analysis under the  
9 investment chapter of the NAFTA.

10           On Monday, Methanex argued, and I  
11 quote--excuse me, Methanex argued that, I quote,  
12 The tendency of governments to use environmental  
13 regulations as a pretense, unquote, provided a,

14 quote, very sound policy basis for shifting the  
15 burden to the United States in this case, end  
16 quote. That was at page 41 of the transcript.

17 Methanex then went on to say that the  
18 United States, therefore, had the burden of proving  
19 first that the environmental measure, meaning the  
20 ban, was necessary; second, that the ban was not a  
21 disguised restriction on foreign investment; third,

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1 that the ban was the least investment-restrictive  
2 measure; and four, that the ban was proportionate  
3 to the problem. This is the test that Methanex  
4 proposed for the national treatment claim, but  
5 there is no basis for applying any such test in  
6 this case or shifting the burden on Methanex's  
7 national treatment claim to the United States.

8 First, as the United States noted several  
9 times yesterday, there is no presumption in  
10 international law that governments adopt  
11 environmental or any other types of regulations as  
12 a pretense. To the contrary, international law  
13 accords a presumption of regularity to governmental  
14 action.

15 Of course, and in any event, regardless of  
16 what Methanex believes would be sound public  
17 policy, it is not this Tribunal's task to draft an  
18 agreement that might best promote that public  
19 policy. Rather, the Tribunal must interpret the  
20 agreement that governs this dispute. Thus, it is  
21 irrelevant that Methanex might believe that another

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1 international instrument better promotes the public  
2 policy position it supports. This arbitration is  
3 being conducted under NAFTA Chapter 11. The  
4 language of the provision that this Tribunal must  
5 apply, that is Article 1102, contains no mention of  
6 GATT Article XX or Methanex's proposed national  
7 treatment test.

8           In addition, Article 2101, subparagraph  
9 one, of the NAFTA lists the specific provisions in  
10 the NAFTA to which GATT Article XX should be  
11 applied, and I have placed the pertinent language  
12 on the screen and also in your slides.

13           Not only is the part containing the  
14 investment chapter not among the listed provisions,  
15 but Article 2101 subparagraph one provides that  
16 GATT Article XX applies to provisions in the NAFTA  
17 governing trade and goods except to the extent that  
18 those provisions apply to investment. Thus, the  
19 text of the NAFTA is clear that GATT Article XX is  
20 inapplicable to an Article 1102 NAFTA claim.

21           Furthermore, as we noted in our rejoinder,

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1 and as my colleague, Mark Clodfelter, just  
2 reiterated, the environmental impacts of an  
3 investment may be taken into account when  
4 determining whether investments are in like



5 circumstances with one another, and this was,  
6 indeed, the case in the S. D. Myers case that my  
7 colleague just discussed.

8           Similarly, to the extent that products  
9 have different environmental or health impacts, a  
10 WTO Tribunal may consider that those products have  
11 different properties, nature, and qualities, and  
12 thus may determine that they are not like as was  
13 done in the asbestos case.

14           And let me take a moment here to just  
15 elaborate on the asbestos case a bit more. The WTO  
16 panel that first considered the case looked at  
17 fibers, some of which contained asbestos and others  
18 which did not contain asbestos. It similarly was  
19 comparing cement products, some of which contained  
20 asbestos and others which did not. Its job was to  
21 determine whether the asbestos-containing products

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1 and the nonasbestos-containing products were like.

2           After it engaged in a like products  
3 analysis, the panel determined that the asbestos  
4 containing products were like the competing  
5 products that did not contain asbestos. The panel,  
6 however, found that the difference in treatment was  
7 justified by the exceptions set forth in GATT  
8 Article XX.

9           The appellate body reversed the panel's  
10 finding. It held that the panel was wrong not to  
11 consider the health risks associated with the

12 products that contained asbestos when determining  
13 whether the products were like.

14 Taking this evidence into account, the  
15 appellate body determined that the evidence did not  
16 support a finding that the asbestos and nonasbestos  
17 products were like.

18 I wish to highlight that despite that the  
19 products competed with one another, the WTO  
20 appellate body reversed the panel's finding of  
21 likeness. Competition, then, is not the

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1 determinative factor in a WTO jurisprudence,  
2 either.

3 On Monday, Methanex commented that all of  
4 the NAFTA parties recognized that competition is an  
5 important element of the like circumstances test.  
6 I've already noted the agreement among the NAFTA  
7 parties that WTO jurisprudence should not be  
8 imported into an Article 1102 analysis. On the  
9 issue of the role of competition in a national  
10 treatment analysis, however, I would like to  
11 highlight what Canada said in its, I believe what  
12 was its fourth Article 1128 submission. It was the  
13 last one that it submitted, and I quote, A  
14 determination that investors or investments compete  
15 for the same business may be one of several  
16 factors, several relevant factors, in determining  
17 whether the treatment accorded by a NAFTA party is  
18 in like circumstances. However, it cannot be the  
19 sole or determining factor. If the determination

20 of whether treatment is accorded in like  
21 circumstances were to be based on a single

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1 criterion, it would expand the scope of Article  
2 1102 in manifestly unreasonable ways and conflict  
3 with the ordinary meaning of the provision, end  
4 quote. And that was in paragraph eight, and it  
5 was, indeed, in Canada's fourth Article 1128  
6 provision-- submission, excuse me.

7 In sum, because all of the circumstances,  
8 including health and environmental impacts of an  
9 investor and investment are taken into account in a  
10 like circumstances analysis, there is no need for a  
11 so-called environmental exception to Article 1102,  
12 and in any event, the text of the NAFTA makes clear  
13 that GATT Article XX has no place in a national  
14 treatment claim under the investment chapter.

15 I will now move on to my final point,  
16 which is I will explain why Methanex's claims  
17 regarding government subsidies to ethanol producers  
18 and California's study of the feasibility of  
19 developing an in-state ethanol industry are of no  
20 import.

21 First, as I've shown on the screen,

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1 Article 1108(7)(b) of the NAFTA provides that, and  
2 I quote, Article 1102 does not apply to subsidies

3 or grants provided by a party or state enterprise,  
4 end quote.

5           So, even if the United States did  
6 discriminate in granting subsidies to the ethanol  
7 industry, at the expense of the MTBE or methanol  
8 industries, this could not establish a national  
9 treatment violation. States may choose to whom  
10 they wish to grant financial assistance. There is  
11 no obligation of equal treatment under Article 1102  
12 where subsidies are concerned.

13           In any event, even without this express  
14 provision, Methanex's allegation could not  
15 establish a national treatment violation. In  
16 making its argument, Methanex misconstrues the very  
17 purpose of Chapter 11. Article 1102 is designed to  
18 address discrimination on the basis of nationality  
19 of an investor. There is no evidence that even  
20 suggests that the United States's support for the  
21 ethanol industry is restricted to support for

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1 ethanol producers in the United States that are  
2 U.S.-owned as opposed to foreign-owned.

3           Similarly, Methanex's complaint that  
4 California favored ethanol, as evidenced by its  
5 interests in studying the feasibility of developing  
6 an in-state ethanol industry, is beside the point.

7           On Monday, Methanex argued that the United  
8 States's response to its evidence that California  
9 had this intent was to argue that California's

10 attempts were a dismal failure.

11           The United States, indeed, has noted that  
12 California has not been successful in developing an  
13 in-state ethanol industry. Our response, however,  
14 is, and has been, that California's actions in this  
15 regard provide no support for a national treatment  
16 violation, and let me explain why this is the case.

17           First, the record contains no evidence  
18 that California has discriminated against Canadian  
19 investors or Canadian-owned investments in pursuing  
20 its purported goal. In fact, as of January 2002,  
21 16 ethanol producers with new plants under

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1 construction entered the U.S. ethanol market.  
2 Methanex, along with any other investor, foreign or  
3 domestic, is free to take advantage of these  
4 opportunities.

5           Moreover, California's consideration of  
6 creating an in-state ethanol industry is entirely  
7 consistent with Chapter 11's objective, which is to  
8 increase investment opportunities within the  
9 territories of the parties. If California wants to  
10 provide incentives to promote investment in the  
11 ethanol industry in California, Chapter 11's  
12 objective is advanced.

13           Methanex's arguments based on subsidies  
14 and fostering of an in-state ethanol industry are  
15 thus irrelevant to its national treatment claim.

16           On Monday, Methanex admitted that its  
17 complaints about subsidies and allegations that

18 those subsidies allegedly violate the WTO agreement  
19 on technical barriers to trade were, and I quote,  
20 not necessarily relevant, end quote. They are not  
21 relevant at all.

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1 Nor is the authority Methanex cited  
2 interpreting provisions in an interprovincial  
3 Canadian trade agreement. Methanex's national  
4 treatment claim is governed by Article 1102, not  
5 any of the WTO agreements and not any other  
6 international or domestic trade agreement. And by  
7 the clear terms of Article 1102, Methanex has not  
8 established a national treatment violation.

9 Unless the Tribunal has any questions, I  
10 would ask that I call upon Mr. Bettauer.

11 PRESIDENT VEEDER: Thank you, Ms. Menaker.  
12 We have no questions.

13 MR. BETTAUER: Mr. President, would it be  
14 time for the coffee break and then we will...

15 PRESIDENT VEEDER: If it's convenient for  
16 you at this stage, let's have a 10-minute coffee  
17 break.

18 MR. BETTAUER: It would be a convenient  
19 break, and then we would have the last series of  
20 speakers, if we could manage to finish our  
21 first-round presentation.

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1           PRESIDENT VEEDER: You've got the time.  
2 Do take the time that you need, but let's have a  
3 10-minute coffee break at this stage. Thank you  
4 very much.

5           (Brief recess.)

6           PRESIDENT VEEDER: Thank you. Let's  
7 resume, Ms. Guymon.

8           MS. GUYMON: Good morning, Mr. President,  
9 members of the Tribunal. It is an honor to address  
10 you today.

11           I will be discussing Methanex's claim  
12 under NAFTA Article 1105. In its Second Amended  
13 Statement of Claim and subsequent reply brief,  
14 Methanex seemed to whittle down its far-ranging  
15 1105 claim to a fairly simple claim of economic  
16 discrimination. On Monday, however, Methanex  
17 reinvented its 1105 claim for at least the third  
18 time, reciting a laundry list of characterizations  
19 of the MTBE ban as grossly unfair, unjust,  
20 idiosyncratic, discriminatory, and lacking in  
21 transparency and candor. That can be found in the

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1 transcript of day one at page 198.

2           While it is difficult to address such a  
3 moving target, I will aim to cover Methanex's  
4 various 1105 arguments in my presentation today.  
5 Methanex's counsel also said on Monday that the  
6 1105 claim rests on the same foundation as the  
7 national treatment claim, to which he devoted most

8 of his presentation. That's at page 10 of the  
9 transcript.

10 The presentations by Mr. Clodfelter and  
11 Ms. Menaker reveal the lack of foundation for the  
12 1102 claim. That showing pulls the foundation out  
13 from under the 1105 claim as well.

14 I will now show that the 1105 claim must  
15 fail for four additional reasons. First, the  
16 July 31st, 2001, Free Trade Commission  
17 interpretation or FTC interpretation, readily  
18 dispels the errors in Methanex's reading of  
19 Article 1105.

20 Second, even without the FTC  
21 interpretation, Methanex's reading of Article 1105

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1 fails under accepted principles of  
2 international--of treaty interpretation because  
3 discrimination is so comprehensively addressed  
4 elsewhere in the treaty.

5 Third, international law's minimum  
6 standard of treatment contains no prohibition on  
7 discrimination generally.

8 Fourth, for the sake of argument, even if  
9 the California measures had discriminated against  
10 foreign methanol, such discrimination against  
11 foreign goods is permitted by state practice.

12 I will address each of these four points  
13 in turn. My presentation will be fairly brief. I  
14 note that Methanex devoted only three paragraphs to  
15 its 1105 claim in the Second Amended Statement of



16 Claim, only four paragraphs in its reply, and its  
17 opening submission on Monday on 1105 occupies about  
18 three pages of a 252-page transcript. This scant  
19 attention suggests that even Methanex hardly  
20 considers its own 1105 claim to be a serious one.

21 First, Methanex's 1105 claim fails under

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1 the correct interpretation of that Article. The  
2 FTC's July 31st, 2001, interpretation left no doubt  
3 about the proper reading of Article 1105. Yet,  
4 Methanex persists in two mistaken notions about its  
5 meaning.

6 First, Methanex asserts that the content  
7 of Article 1105's minimum standard of treatment  
8 should be determined using dictionary definitions  
9 rather than relying on customary international law.  
10 Second, Methanex insists that a violation of  
11 another provision of the NAFTA or any other treaty  
12 automatically establishes a claim under Article  
13 1105.

14 The July 31st, 2001, FTC interpretation,  
15 which is binding on this Tribunal, dispels these  
16 notions.

17 As can you see in my first slide, which is  
18 also included in the packet you have on paper, the  
19 relevant portions of the FTC interpretation do not  
20 support Methanex's reading. First, the FTC  
21 clarified that, quote, The concepts of fair and

1 equitable treatment and full protection and  
2 security do not require treatment in addition to or  
3 beyond that which is required by the customary  
4 international law minimum standard of treatment of  
5 aliens, end quote.

6           Thus, Methanex cannot prevail by merely  
7 asserting, as it does in the Second Amended  
8 Statement of Claim, that, quote, Intentional  
9 discrimination is, by definition, unfair and  
10 inequitable, end quote.

11           Nor can Methanex succeed in its 1105 claim  
12 merely by characterizing the ban as arbitrary,  
13 grossly unfair, unjust, idiosyncratic,  
14 discriminatory, and lacking in transparency and  
15 candor, as it did on Monday. Rather, Methanex must  
16 identify some principle of customary international  
17 law that was violated.

18           Second, in my next slide you will see  
19 paragraph B-3 of that same FTC interpretation. The  
20 FTC stated, quote, A determination that there has  
21 been a breach of another provision of the NAFTA or

1 of a separate international agreement does not  
2 establish that there has been a breach of Article  
3 1105(1), end quote. Thus, Methanex cannot prevail  
4 by claiming, as it does in its pleadings, that it  
5 is common sense to conclude that violations of

6 independent treaty provisions constitute a breach  
7 of Article 1105.

8           Confronted with the FTC's interpretation  
9 of Article 1105, Methanex resorts to calling it  
10 suspect because it was issued while this  
11 arbitration was underway. Methanex also questions  
12 the effect of the interpretation on these  
13 proceedings, claiming the interpretation is an  
14 improper amendment that can be ignored.

15           Such disrespect for the FTC's  
16 interpretation should not be countenanced. The  
17 NAFTA, in Articles 1131, 1132, and 2001 clearly  
18 endows the FTC with the authority to make  
19 interpretations like this one, and plainly states  
20 that those interpretations will be binding even on  
21 existing Tribunals. That authority cannot be

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1 limited in the way Methanex suggests without  
2 rendering the FTC completely powerless.

3           In addition, the July 31st, 2001, FTC  
4 interpretation came amidst several ongoing  
5 arbitrations and addressed claims made in those  
6 other cases as much as it addressed claims made by  
7 Methanex here. The Tribunals in those other cases,  
8 including Mondev, UPS, ADF, and Loewen, accepted  
9 and followed the FTC interpretation.

10           For example, you will see in my next slide  
11 a portion of the Mondev award's treatment of  
12 Article 1105, quote, An Arbitral Tribunal may not  
13 apply its own idiosyncratic standard in lieu of the

14 standard laid down in Article 1105(1). The FTC's  
15 interpretation makes it clear that the standard of  
16 treatment, including fair and equitable treatment,  
17 is to be found by reference to international law.

18 Most recently, the Tribunal in the Waste  
19 Management case turned to the FTC interpretation as  
20 the very first step in its analysis of the Article  
21 1105 claim in that case. The Waste Management

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1 Tribunal then reviewed the other Chapter 11 cases  
2 involving Article 1105, including the Mondev, ADF,  
3 and Loewen decisions that I have already mentioned.

4 In referring to those cases, the Waste  
5 Management discussion makes particular note of the  
6 fact that those Tribunals applied the FTC  
7 interpretation. You will recall that Methanex's  
8 counsel quoted selectively from the Waste  
9 Management decision on Monday, but reading the  
10 entire discussion of Article 1105, which spans  
11 several paragraphs in that award, demonstrates a  
12 respect for the FTC interpretation that Methanex  
13 appears not to share.

14 Rather, Methanex refers only to the  
15 synthesizing summary paragraphs at the end of this  
16 lengthy discussion. It attempts to use that  
17 summary to suggest, contrary to the Mondev, ADF,  
18 and Loewen decisions, that a Tribunal may adopt its  
19 own idiosyncratic view of what is fair and  
20 equitable rather than adhering to established

21 principles of international law.

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1           The FTC interpretation expressly disallows  
2 that take on Article 1105, and Waste Management  
3 should not be read to permit it.

4           This Tribunal must, like the other  
5 Tribunals interpreting Article 1105 post-July 2001,  
6 accept the FTC interpretation and not Methanex's  
7 contrary reading of Article 1105.

8           I now turn to my second point. Even  
9 without the FTC interpretation, an analysis of  
10 Article 1105 under Article 31 of the Vienna  
11 Convention on the Law of Treaties, shows that other  
12 parts of the NAFTA and not Article 1105 were  
13 intended to address claims of discrimination.  
14 Article 31(1) directs that a treaty be interpreted  
15 in accordance with the ordinary meaning to be given  
16 to the terms of the Treaty in their context. Let's  
17 look first at the ordinary meaning of Article 1105.

18           On my next slide you will see that NAFTA  
19 Article 1105 is entitled Minimum Standard of  
20 Treatment, a clear reference to the absolute  
21 minimum standard recognized in customary

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1 international law, not a relative standard. The  
2 phrases in the text of paragraph one of Article  
3 1105 such as "treatment in accordance with

4 international law, " "fair and equitable treatment, "  
5 and "full protection and security," also allude to  
6 this absolute standard. Such an absolute minimum  
7 standard is guaranteed no matter what treatment a  
8 state accords its own nationals. Thus, it is not  
9 the kind of relative standard guaranteed in  
10 Articles 1102 and 1103 where the level of treatment  
11 guaranteed is determined by reference to the  
12 treatment accorded to nationals or other  
13 foreigners.

14 Discrimination is an accusation that  
15 necessarily requires a comparator, but Article  
16 1105's ordinary meaning identifies a standard that  
17 does not vary no matter what the comparator.

18 Next, looking at the context also confirms  
19 that Article 1105 does not incorporate a general  
20 obligation of nondiscrimination. Other portions of  
21 NAFTA Chapter 11 actually permit certain forms of

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1 differentiation. As you will see in the next  
2 slide, some of the text of Article 1108, Article  
3 1108, in conjunction with several of the annexes to  
4 the NAFTA, provides exceptions to the obligations  
5 of nondiscrimination that are laid out in the  
6 national treatment, most-favored-nation provisions,  
7 and other provisions, and you will see in Article  
8 1108 the specific references to Articles 1102,  
9 1103, 1106, and 1107. 1105 is not on that list.  
10 And as an illustration in the annex, one example,  
11 Annex One from Mexico, only Mexican nationals may

12 operate, own and operate retail outlets for  
13 gasoline. Clearly a necessary exception to Article  
14 1102.

15           If Article 1105 were read to prohibit  
16 discrimination, someone could bring a claim under  
17 Article 1105 based on this law in Mexico that only  
18 allows Mexican nationals to operate retail gasoline  
19 outlets, and that would render 1108, 1102  
20 meaningless. So, clearly, 1105 was not intended to  
21 address discrimination and does not contain a

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1 prohibition on discrimination. Otherwise, 1108, in  
2 conjunction with its annexes, would be meaningless.

3           Turning to my third point, an examination  
4 of the content of customary international law's  
5 minimum standard of treatment reveals no principle  
6 that was violated here. Although it is Methanex's  
7 burden to do so, Methanex has nowhere conducted  
8 such an examination of international law, nor  
9 demonstrated that any identifiable principle of  
10 international law has been violated. International  
11 law does not prohibit discrimination generally  
12 against aliens. Rather, national treatment is an  
13 obligation that states may choose to undertake by  
14 treaty, but are otherwise not required to honor.

15           In fact, it is clear from state practice  
16 that international law condones many forms of  
17 differentiation between aliens and nationals. For  
18 example, an alien cannot bring an international

19 claim because he was denied the right to vote.  
20 Aliens are routinely denied other rights accorded  
21 nationals, such as the right to work. Aliens

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1 typically do not possess the same property rights  
2 as nationals, and none of these denials of rights  
3 to aliens gives rise to a cognizable claim under  
4 customary international law. Particularly in the  
5 economic realm, aliens may lawfully be denied many  
6 rights that are held by nationals.

7 Customary international law only  
8 recognizes ideas of nondiscrimination within  
9 certain limited contexts. One example is the  
10 context of expropriation, where international law  
11 prohibits discriminatory takings. Another is that  
12 international law requires compensation to aliens  
13 and nationals on a nondiscriminatory basis for  
14 injuries sustained during times of civil strife,  
15 unrest, or insurrection. But these limited  
16 contexts clearly do not exist in this case.

17 Even if we take Methanex's Article 1105  
18 claim as it was stated on Monday to include a claim  
19 based on the alleged lack of transparency and  
20 candor in the process of enacting the ban, Methanex  
21 still can identify no principle of international

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1 law that was violated.



2 Methanex has made similar arguments in the  
3 first iteration of its 1105 claim, attacking the  
4 process by which California imposed the ban. The  
5 United States answered those arguments. At pages  
6 44 and 45 of our November 2000 memorial on  
7 jurisdiction and admissibility, we explained that  
8 customary international law imposes no constraints  
9 on the processes by which states adopt executive or  
10 legislative measures such as these. As you will  
11 see in my last slide, Detlev F. Vagts, Professor of  
12 Law at Harvard Law School, explained: "There is no  
13 rule of customary international law that imposes  
14 constraints on the process by which states exercise  
15 their jurisdiction to prescribe. The variety of  
16 legislative and administrative procedures for  
17 laying down rules is so great--involving Federal  
18 states and centralized states, parliamentary  
19 states, and presidential states, democratic states,  
20 and authoritarian states--that no general  
21 international consensus on what is a fair process

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1 has emerged or even been proposed." That's from  
2 paragraph 15 of Professor Vagts's report which is  
3 found at one JS tab 3.

4 Certainly the process by which California  
5 enacted its ban involving the Legislature, the  
6 executive, administrative agencies, and the public  
7 fits among these varieties of administrative  
8 procedures that are acceptable under customary  
9 international law. Thus, even considering

10 Methanex's revised attack on the process by which  
11 the ban was enacted, Methanex still has not  
12 identified a principle of customary international  
13 law that was violated here.

14           My fourth and final point is that the  
15 particular kind of discrimination alleged by  
16 Methanex here, discrimination against foreign  
17 goods, is actually a common state practice. The  
18 world trading system relies on the ability of  
19 states to treat goods differently, depending on  
20 their country of origin. Likewise, states often  
21 act to protect domestic industries. Thus, even if

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1 the charges of discrimination leveled against the  
2 United States were true--and they are not--such  
3 discrimination against foreign goods would not  
4 violate any principle of customary international  
5 law. It therefore cannot possibly violate Article  
6 1105.

7           In conclusion, the Tribunal has a simple  
8 task before it in disposing of Methanex's Article  
9 1105 claim. Accepting the FTC interpretation, as  
10 the Tribunal is bound to do, means rejecting  
11 Methanex's Article 1105 claim. Even scrutiny of  
12 the 1105 claim, without considering the FTC  
13 interpretation, would lead to the same result.  
14 Article 1105 and the customary international law  
15 minimum standard of treatment that it embodies do  
16 not prohibit economic discrimination such as that

17 alleged by Methanex. The United States has  
18 demonstrated that the measures at issue did not  
19 discriminate against foreign methanol or MTBE.  
20 Rather, they treat methanol and MTBE in exactly the  
21 same manner, whatever their country of origin. But

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1 even if the measures had been discriminatory, that  
2 type of discrimination against foreign goods would  
3 not violate the minimum standard of treatment.

4 For these reasons, and for those set forth  
5 in the United States's pleadings, Methanex's  
6 Article 1105 claim should be rejected in its  
7 entirety.

8 Unless the Tribunal has questions...

9 PRESIDENT VEEDER: Thank you, we have no  
10 questions at this stage.

11 MS. GUYMON: I turn the floor over to our  
12 expropriations claim now. Ms. Menaker.

13 MS. MENAKER: Thank you, Mr. President,  
14 members of the Tribunal.

15 I will now address Methanex's claim under  
16 Article 1110. This will not take me very long to  
17 do.

18 The lack of evidence in support of this  
19 claim indicates that Methanex is not seriously  
20 pressing its expropriation claim. Article  
21 1110--and I should note that this presentation is

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1 not accompanied by any slides, so you don't have  
2 any package there.

3           PRESIDENT VEEDER: Thank you very much for  
4 telling us.

5           MS. MENAKER: Article 1110 provides that a  
6 state may not expropriate an investment without  
7 paying compensation. For there to be an  
8 expropriation, there must be a taking of the  
9 investment. Methanex has not alleged that the  
10 United States has physically taken title to any of  
11 Methanex's investments, nor has Methanex  
12 demonstrated that the United States has so  
13 substantially interfered with any of its  
14 investments as to amount to a de facto taking of  
15 that investment.

16           In fact, there is no evidence of anything  
17 taken from Methanex by anyone. Therefore, there  
18 can be no finding of an expropriation here.

19           My presentation will consist of three  
20 parts. I will establish that Methanex has not  
21 proven an expropriation of either of its

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1 subsidiaries: Methanex-Fortier or Methanex-US. I  
2 will then show why Methanex's allegations that  
3 assets of those enterprises have been expropriated  
4 also fails to prove an expropriation. In the third  
5 and last part of my presentation, I will  
6 demonstrate that California's ban cannot be  
7 considered expropriatory under well established

8 international law.

9 I'll start with Methanex-Fortier,  
10 Methanex's shuttered methanol plant in Louisiana.  
11 Much of the evidence that I'm about to discuss will  
12 sound familiar to this Tribunal since my colleague,  
13 Mr. McNeill, referred to the same facts when he  
14 explained that Methanex has not proven that it had  
15 suffered any loss or damage as a result of the ban,  
16 I will be referring to some of those same facts and  
17 explain why those facts are also relevant to  
18 Methanex's expropriation claim.

19 There is no evidence to support a finding  
20 that Methanex-Fortier has been expropriated. In  
21 fact, Methanex idled its factory at Fortier before

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1 the Executive Order was signed in order to shift  
2 its production to less expensive, more efficient  
3 offshore methanol plants. Thus, the shutdown could  
4 not have resulted from the Executive Order.

5 How does Methanex try to get around this  
6 fact? It argues that the California ban had the  
7 effect of keeping the plant shut, but there is no  
8 evidence that the Fortier plant ever supplied any  
9 methanol used to produce MTBE for California  
10 gasoline, and therefore, there is no basis to  
11 assume that the Executive Order had any such  
12 effect.

13 The high natural gas prices that existed  
14 in 1999 causing Methanex to idle the Fortier plant

15 only continued to rise in the ensuing years. The  
16 persistent high natural gas prices made reopening  
17 the plant an uneconomical choice, again unrelated  
18 to the California MTBE ban.

19 Finally, according to Methanex, it bought  
20 out a minority shareholder's interest in  
21 Methanex-Fortier a full year after the Executive

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1 Order was signed. Such action is wholly  
2 inconsistent with the notion that California took  
3 Fortier away from Methanex in 1999 when Methanex  
4 filed its claim.

5 I will now turn to Methanex-US. There is  
6 no evidence that Methanex-US has been expropriated  
7 either. Methanex does not contend that the company  
8 is no longer under its control or even that the  
9 company is unprofitable. In Mr. Macdonald's third  
10 affidavit he provided data for Methanex-US's annual  
11 revenues from 1999 through 2002. That data shows  
12 that Methanex-US's annual revenues increased during  
13 that time from \$228 million to more than \$300  
14 million.

15 In fact, as my colleague, Mr. McNeill,  
16 demonstrated yesterday, Methanex has not proven  
17 that either of its purported investments has  
18 suffered any damage as a result of the ban, much  
19 less a loss that would rise to the level of an  
20 expropriation. Of course, even if Methanex had  
21 been able to demonstrate some loss, that would fall

1 far short of the showing that is necessary to prove  
2 an expropriation. Much more than a mere negative  
3 impact on an investment's profitability is required  
4 to establish a taking under international law. The  
5 Tribunal will find ample support for this  
6 proposition in paragraphs 397 to 401 in our Amended  
7 Statement of Defense. In short, the facts in the  
8 record cannot support a finding that either  
9 Methanex-Fortier or Methanex-US has been  
10 expropriated.

11           Methanex next contends that certain of its  
12 investments' assets have been expropriated.  
13 Methanex has only vaguely referred to these assets  
14 as goodwill, market share, and customer base. As  
15 we've demonstrated in our written submissions and  
16 as we argued at the jurisdictional hearing,  
17 goodwill, market share, and customer base may be  
18 taken into account when valuing an enterprise that  
19 has been expropriated. However, none of these  
20 things are by themselves capable of being  
21 expropriated. Goodwill, market share, and customer

1 base are attributes of a company but are not  
2 property themselves. To establish an  
3 expropriation, international law requires a showing  
4 that a property interest or right has been taken.  
5 And international law also establishes that

6 goodwill, market share, and customer base are not  
7 property rights or interests that may, by  
8 themselves, be expropriated.

9           Again, the United States has introduced  
10 ample legal authority to this effect, and I won't  
11 review all of that authority unless the Tribunal  
12 has questions on it, but I would refer the Tribunal  
13 to paragraphs 392 to 395 in our Amended Statement  
14 of Defense for citations to that authority.

15           Methanex, on the other hand, has provided  
16 no legal authority to the contrary. The domestic  
17 law authority it cites is not applicable. The  
18 governing law in this arbitration is international  
19 law.

20           As for the Amoco case before the Iran-U. S.  
21 Claims Tribunal that Methanex referred to on

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1 Monday, that case does not support Methanex. In  
2 that case, the Tribunal took goodwill into  
3 consideration when valuing property that the  
4 Tribunal had determined was expropriated. It did  
5 not find that goodwill, by itself, was capable of  
6 being expropriated.

7           And the two NAFTA Chapter 11 decisions on  
8 which Methanex relies are distinguishable. S. D.  
9 Myers and Pope and Talbot address market access and  
10 not market share, customer base, or goodwill.  
11 Methanex's market access is not affected by the  
12 ban. It has unrestricted access to sell the



13 product it produces and markets into the California  
14 market.

15 In any event, much of what Methanex cites  
16 for the proposition that market access may be  
17 expropriated is dicta or comes from the separate  
18 opinion of a lone arbitrator.

19 And finally, to the extent that the S. D.  
20 Myers or Pope and Talbot decisions can be read to  
21 suggest an outcome at odds with that proposed by

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1 the United States, all of the NAFTA parties agree  
2 that those decisions should not be followed. And I  
3 refer the Tribunal to paragraph 62 of Canada's  
4 second Article 1128 submission, paragraph 21 of  
5 Mexico's second Article 1128 submission, and  
6 paragraph 8 of Mexico's fourth Article 1128  
7 submission.

8 Under customary international law  
9 principles of treaty interpretation embodied in the  
10 Vienna Convention on the Law of Treaties, such an  
11 agreement among all of the parties to a treaty  
12 shall be taken into account.

13 Now, what I just discussed may raise  
14 interesting legal issues. In this case, it's not  
15 even necessary for the Tribunal to answer many of  
16 these questions. And that's because Methanex's  
17 claim that its enterprises, goodwill, market share,  
18 and customer base have been expropriated also fails  
19 for utter lack of proof. There is no evidence that  
20 any goodwill belonging to Methanex-US or

21 Methanex-Fortier has been taken, nor does the

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1 record contain any evidence that the customer base  
2 or market share of these entities has been  
3 expropriated.

4           On Monday, Methanex referred to  
5 Mr. Macdonald's third affidavit. In that  
6 affidavit, Mr. Macdonald states that in December  
7 2003, Methanex paid \$25 million to purchase Terra  
8 Corporation's U.S. methanol customer list and  
9 certain production rights to their Beaumont, Texas,  
10 methanol plant.

11           He also states that in 2002, Methanex-US  
12 acquired similar assets from Lyondell for \$10  
13 million. Customer lists, as opposed to customer  
14 base, may be property for certain purposes.  
15 Methanex, however, does not allege that California  
16 or anyone else took these customer lists or  
17 production rights that it purchased away from it.  
18 It has submitted no evidence that any goodwill,  
19 customer base, or market share was expropriated.

20           There is one further significant reason  
21 why Methanex's expropriation claim fails. That is

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1 because the California ban cannot be considered  
2 expropriatory in any event. The lack of evidence  
3 of any taking here makes this argument almost

4 academic, but because this is an important point of  
5 principle, I will devote a few moments to it,  
6 nonetheless.

7           The United States has cited in its  
8 submissions a host of international legal  
9 authorities in support of the principle that a  
10 nondiscriminatory action taken to protect the  
11 public health is not expropriatory. Methanex does  
12 not dispute the existence or the legitimacy of this  
13 principle of international law. Rather, Methanex  
14 argues that this principle is inapplicable here  
15 because supposedly California's ban is  
16 discriminatory and the ban is not a public health  
17 measure. Methanex is wrong on both counts.

18           First, as Mr. Clodfelter and I  
19 demonstrated earlier this morning, California's ban  
20 is not discriminatory. It bans the use of all  
21 gasoline containing MTBE, regardless of the

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1 nationality of the producer or marketer of the  
2 gasoline or the MTBE. To the extent that methanol  
3 investors, producers, or marketers are accorded any  
4 treatment at all by the ban, that treatment does  
5 not discriminate on the basis of nationality.

6           Second, California's ban is a public  
7 health measure of the type that has been deemed  
8 nonexpropriatory under international law. Methanex  
9 has argued to the contrary on the grounds that the  
10 ban is more aptly described as an environmental

11 measure, and because the State of California took  
12 several years to implement the ban.

13           The Executive Order, however, finds that  
14 MTBE is, and I quote, an environmental threat to  
15 groundwater and drinking water, end quote.

16 Protecting the public drinking water supply is  
17 undoubtedly a public health purpose. And there is  
18 nothing inconsistent with characterizing certain  
19 environmental measures as public health measures.

20           Some environmental measures, such as those  
21 intended solely to conserve the natural beauty of a

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1 place, may have no public health purpose. Others  
2 clearly do. For example, enforcing the cleanup of  
3 a toxic dump because the site was causing  
4 neighboring population's health problems may be  
5 referred to as an environmental measure and a  
6 public health measure. There is no dispute that  
7 potable drinking water is critical to public  
8 health.

9           The concept of protecting public health in  
10 public international law is broad enough to  
11 encompass state measures to protect drinking water  
12 because water is essential. California's decision  
13 to protect its public drinking water sources from a  
14 contaminant that made the water undrinkable is  
15 properly classified as an action taken to protect  
16 the public health.

17           Finally, there is no merit to Methanex's  
18 suggestion that the MTBE ban cannot be considered a

19 public health measure because it took several years  
20 to implement. Not all public health measures are  
21 enacted overnight. The speed in which a public

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1 health measure will be adopted inevitably will  
2 vary, depending on both the nature of the threat  
3 and the nature of the proposed response. The  
4 record contains ample evidence of public health  
5 measures, such as the ban of asbestos and the  
6 prohibition against lead in gasoline that took many  
7 years longer to implement than California's ban of  
8 MTBE.

9 California banned MTBE from gasoline as  
10 quickly as was feasible. That it took California  
11 some time between discovering that MTBE was  
12 contaminating its groundwater and banning MTBE from  
13 gasoline because of that contamination, does not in  
14 any way cast doubt on the fact that California  
15 banned MTBE in gasoline in order to protect the  
16 health of its inhabitants. Consequently, the  
17 California ban cannot be deemed expropriatory.

18 Methanex's expropriation claim fails on  
19 multiple grounds. The Tribunal need not spend much  
20 time considering this claim, however, given the  
21 state of the record. As Methanex has repeatedly

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1 advised its shareholders, California's MTBE ban has  
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2 had no impact on it. Methanex does not and cannot  
3 reconcile these repeated statements with its claim  
4 that the ban has expropriated its investments in  
5 the United States.

6 Unless the Tribunal has any questions.

7 PRESIDENT VEEDER: Thank you, Ms. Menaker.  
8 We have no questions at this stage.

9 MS. MENAKER: Thank you.

10 PRESIDENT VEEDER: Ms. Toole.

11 MS. TOOLE: Thank you, Mr. President.

12 Members of the Tribunal. It is an honor to appear  
13 before you today. I will address one additional  
14 ground that requires dismissal of Methanex's claim,  
15 its failure to provide any evidence of its  
16 ownership of investments in the United States.

17 Methanex has lodged a serious charge  
18 against the United States. It seeks for a NAFTA  
19 claim an unprecedented \$970 million in damages. To  
20 ensure the integrity of these proceedings, this  
21 Tribunal must hold Methanex to its burden of proof.

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1 The statement of its corporate officer and an  
2 organizational chart would be insufficient evidence  
3 of Methanex's ownership of Methanex-US and  
4 Methanex-Fortier in any court. It certainly is not  
5 sufficient in this forum.

6 The insufficiency of Methanex's evidence  
7 on this fundamental point is clear on the face of  
8 the documents it offers as proof. And if I could

9 direct the Tribunal's attention to the screen, or  
10 page one of your packets, I have displayed  
11 paragraph five of the third affidavit of Michael  
12 Macdonald, Senior Vice President for Methanex.

13 According to Mr. Macdonald's statements,  
14 Methanex owns several companies in the United  
15 States, which include Methanex-US and  
16 Methanex-Fortier. He says that Methanex indirectly  
17 owns a hundred percent of the two partners that own  
18 Methanex-US, and Methanex indirectly owns a hundred  
19 percent of Methanex-Fortier.

20 Mr. Macdonald's sole support of this  
21 assertion is an organizational chart. Nothing in

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1 Mr. Macdonald's statement indicates that his  
2 assertions are based on anything more than his  
3 review of this chart.

4 Let us take a look at the organizational  
5 chart. It's projected on the screen. I should  
6 note that the copy that you have in your packets is  
7 just a PDF file. It's difficult to read, so I  
8 would refer you to volume 19 of the Joint  
9 Supplement, or Joint Submission of Evidence for a  
10 clearer version of that copy.

11 You should notice that it's dated  
12 December 12th, 2003. This document apparently was  
13 not prepared until after the United States  
14 submitted its Amended Statement of Defense. It  
15 does not even purport to show that Methanex owned  
16 the two enterprises on the date the challenged

17 measures were adopted.

18           In any event, whereas the corporate books  
19 of the two enterprises could provide specific  
20 evidence of actual ownership, an organizational  
21 chart does not constitute evidence of ownership

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1 under any legal system with which we are familiar.

2           On Monday, Methanex referred briefly to  
3 the organizational chart and said that it, quote,  
4 sets forth the relationship of the companies to  
5 Methanex in Canada, and that's at pages 201 and 202  
6 of the transcript. However, it did not address the  
7 U.S. position that this chart does not prove that  
8 Methanex actually owns or controls Methanex-US and  
9 Methanex-Fortier.

10           As we've noted in our rejoinder, other  
11 international Tribunals rejected the sort of  
12 evidence of ownership that Methanex offers here.  
13 As the American-Turkish Claims Settlement  
14 Commission held in the Barbes case, proof of  
15 ownership before an international Tribunal requires  
16 more than an affidavit from a witness claiming  
17 familiarity with the property at issue. And as the  
18 ICSID Tribunal in Tradex v. Albania recognized,  
19 documents such as these are insufficient evidence  
20 of ownership because they're unauthoritative. This  
21 is especially true where specific proof of



1 ownership of an investment is available to a  
2 claimant.

3           If Methanex owns and controls Methanex-US  
4 and Methanex-Fortier, as it claims, it should have  
5 ready access to specific proof of its ownership,  
6 such as corporate books of those enterprises.

7           For the Tribunal's reference, the Barbes  
8 case may be found at Volume 1 of the Appendix of  
9 Legal Authorities to the United States memorial on  
10 jurisdiction at Tab 9, and the Tradex case may be  
11 found at Volume Five of the appendix of legal  
12 authorities to the United States's rejoinder at Tab  
13 87.

14           The requirement that a claimant provide  
15 authoritative proof of its ownership is not a mere  
16 formality. As Mr. McNeill mentioned yesterday, the  
17 amount Methanex seeks in this case, nearly a  
18 billion dollars, roughly approximates the value of  
19 the company. Methanex is asking this Tribunal to  
20 award a transfer of wealth on the order of a major  
21 corporate transaction. No commercial buyer would

1 ever accept to buy a company on no more than the  
2 say-so of an interested employee and an  
3 organizational chart.

4           The United States, as the respondent in  
5 this billion dollar case, has the right to insist  
6 on evidence of ownership as authoritative as what

7 would be required in a corporate transaction. And,  
8 we submit, the Tribunal has the obligation to  
9 scrutinize the evidence on this point accordingly.

10 In conclusion, Mr. President, members of  
11 the Tribunal, I would highlight what we suggest you  
12 are already aware of. This is an important case.  
13 Already, the Tribunal's decision on amicus  
14 submissions on place of arbitration have set  
15 important precedents of procedure that have been  
16 followed by other NAFTA Tribunals, and we expect  
17 that that will also hold true for the award that  
18 issues from this proceeding. It would, we submit,  
19 set a poor precedent were this Tribunal to accept a  
20 mere organizational chart as sufficient evidence of  
21 ownership. For this reason of principle,

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1 therefore, as well as the others I have outlined,  
2 the United States respectfully submits the Tribunal  
3 should find that Methanex's ownership of  
4 investments has not been established on the record  
5 of this case.

6 And unless the Tribunal has any  
7 questions...

8 PRESIDENT VEEDER: Thank you, Ms. Toole.  
9 We have no questions at this stage.

10 MS. TOOLE: I will turn the floor back to  
11 Mr. Bettauer.

12 MR. BETTAUER: Mr. President, members of  
13 the Tribunal, at this point I would like to close  
14 the U.S. first-round presentation, and you will see

15 we are within the anticipated time, closing early.  
16 I do not intend now to repeat what you have heard  
17 yesterday and today, but would like to make a few  
18 points.

19           We have tried in our presentations to pull  
20 together and synthesize our arguments without  
21 repeating the arguments and authorities set out in

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1 our pleadings. We, of course, continue to rely on  
2 the arguments and authorities set out in those  
3 pleadings, and I wanted to mention that.

4           The U.S. written and oral submissions, we  
5 believe, show conclusively that there is no case  
6 here. There was no U.S. measure that related to  
7 Methanex or its investments. There was no U.S.  
8 measure that put into effect--was put into effect  
9 with an intent to harm Methanex or its investments.  
10 There was no U.S. measure put into effect with an  
11 intent to harm methanol producers. And Methanex  
12 has failed to prove that there were any such  
13 measures or that it was, in fact, harmed. Nor has  
14 Methanex provided legally sufficient proof of  
15 ownership of any investment in the United States  
16 that could be harmed.

17           That should be the end of it, but out of  
18 an abundance of caution, we have gone further. We  
19 have also demonstrated that even assuming for the  
20 sake of argument that Methanex could get beyond  
21 those hurdles, which it cannot, there is no basis

1 for any of the claims of breach that Methanex  
2 makes. Canadian and U.S.-owned investments in like  
3 circumstances were accorded the same treatment.  
4 There was no national treatment violation here.  
5 Nor has Methanex proved any way in which it or its  
6 investment were denied the minimum standard of  
7 treatment required by international law. Nor has  
8 any evidence of any expropriation been adduced in  
9 this case. For all these reasons, this case must  
10 be dismissed in its entirety.

11           Mr. President, members of the Tribunal, I  
12 must say that this is an astonishing case. It is a  
13 case based on speculation and unsubstantiated  
14 inferences. It hardly needs mentioning that there  
15 is nothing wrong with the public policy that  
16 fosters use of renewable resources. It hardly  
17 needs mentioning that some corruption exists in  
18 every political system, but that one cannot  
19 therefore assume without proof, based on  
20 speculation, that corruption has occurred in any  
21 specific case.

1           It should go without saying that the  
2 existence of a possibility is not the same thing as  
3 proof of a fact. It should go without saying that  
4 the existence of two facts is not the same as proof

5 of a causal relation between those facts. In the  
6 present case, Methanex has neither proved the facts  
7 nor proved the causal relationship it alleges.

8           Defending against Methanex's astonishing  
9 claims has been a real burden on the United States.  
10 It has required considerable resources. Yet the  
11 case is so lacking in any factual or legal basis  
12 that one must ask why it was brought.

13           It is hard to understand. Why would a  
14 company pursue a \$970 million NAFTA claim based on  
15 California's MTBE ban while at the same time  
16 assuring its stockholders, shareholders, that the  
17 ban has had no impact? Why would a company advance  
18 an arbitration, the vitriolic assertions and  
19 allegations we have heard, when it knows the  
20 evidence cannot sustain them? Why bring a national  
21 treatment claim when it does not dispute that it

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1 received the same treatment as U.S.-owned investors  
2 in the same industry? Why would it pursue an  
3 expropriation claim when it can point--when it can  
4 point to nothing that has been taken? The only  
5 answer we could divine is found in a statement made  
6 by Methanex's senior officer, Mr. Macdonald.

7           You will find the statement set out in  
8 paragraph 433 of the U.S. Amended Statement of  
9 Defense, and it is now also displayed on the  
10 screen, and is the only slide in this brief  
11 conclusion.

12           Mr. Macdonald explained why this case was

13 brought. What did he say? He said, and I quote, A  
14 lot of the energy debate in the U.S. is on energy  
15 security, and ethanol has pounced on that.

16 He went on to say, and I quote again, The  
17 voice of methanol has not been heard in the debate.

18 So, how did Methanex deal with that?  
19 Mr. Macdonald said, and I quote again, Our strategy  
20 as a company was to get involved through an  
21 international trade dispute. That's the only forum

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1 where we have even have an opportunity to get a  
2 hearing, closed quote.

3 Mr. Macdonald has provided two further  
4 witness statements since the United States  
5 submitted its Amended Statement of Defense. In  
6 neither of them did he suggest that this quotation  
7 or the U.S. reading of it was in error.

8 Mr. Macdonald's statement is important.  
9 It is an assertion that an international trade  
10 dispute--this case--was not brought because of any  
11 belief that any injury had been suffered, nor from  
12 this quotation does it appear that any NAFTA  
13 violation was the motivation. The quotation  
14 suggests that this case was brought to put a media  
15 spotlight on methanol and to counter the media  
16 attention that was being given to ethanol, a public  
17 relations' effort by Methanex. It surely was not  
18 brought based on factual or legal, a factual or  
19 legal foundation in the NAFTA.

20 Mr. President, members of the Tribunal,  
21 this is one reason that the Tribunal should award

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1 the United States its costs in this case, but it is  
2 not the only reason that an award on costs is  
3 merited. Why did this case go forward after the  
4 First Partial Award? It was only because Methanex  
5 assured this Tribunal that it would provide  
6 evidence that California had secretly intended to  
7 target its MTB ban--MTBE ban at Methanex and at its  
8 investments and thereby cause it loss. But  
9 Methanex has offered no such proof. All it has  
10 offered has been newspaper clippings and other  
11 irrelevant documents that fail to establish either  
12 the secret intent or, indeed, any loss at all.

13 As we've already pointed out--this is no  
14 surprise--since Methanex repeatedly admitted in  
15 documents and statements that it suffered no  
16 impact--no impact--as a result of the California  
17 measures.

18 This behavior, saying one thing to this  
19 Tribunal and something else to its stockholders is  
20 telling. Our position on cost is explained at  
21 paragraphs 437 to 444 of the U. S. Amended Statement

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1 of Defense to which I refer the Tribunal. Under  
2 Article 41 of the UNCITRAL Rules, the costs of the

3 arbitration shall, in principle, be borne by the  
4 unsuccessful party. Moreover, as the S.D. Myers  
5 Tribunal noted in paragraph 20 of its final award,  
6 the conduct of the disputing parties during the  
7 course of the proceedings is certainly a matter to  
8 be taken into account in assessing costs.

9           In the present case, Methanex has  
10 repeatedly disregarded the applicable Arbitration  
11 Rules and Tribunal's orders. It has repeatedly  
12 sought to blame the United States, or more  
13 frequently in recent months, the Tribunal, for  
14 Methanex's own actions. Methanex's conduct in  
15 these proceedings is difficult to square with the  
16 obligation to arbitrate in good faith.

17           As the Tribunal stated in its procedural  
18 award of June 2, 2003, and I quote, The Tribunal is  
19 not disempowered from making an order for costs  
20 against Methanex, if the Tribunal should decide  
21 that the Tribunal has no jurisdiction over the

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1 disputing parties' dispute, closed quote.

2           Given Methanex's failure to produce  
3 evidence that the Tribunal deemed essential to its  
4 jurisdiction, and in light of Methanex's conduct in  
5 these proceedings, it is appropriate for the  
6 Tribunal to award full costs to the United States.

7           Mr. President, members of the Tribunal,  
8 the United States submits that all the claims  
9 brought in this case should be dismissed and that  
10 the United States should be awarded full costs.



11 That concludes the United States' s first-round  
12 presentation. Thank you, Mr. President, members of  
13 the Tribunal, for your attention.

14 PRESIDENT VEEDER: Thank you,  
15 Mr. Bettauer.

16 We have no questions at this stage, and so  
17 that brings us to the end of the U. S. ' s oral  
18 opening submissions. We now have to address a  
19 matter which relates to the United States' s motion  
20 to exclude certain of Methanex' s evidence, and what  
21 we propose to do is to break here and to deal with

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1 that in an administrative meeting. We foresee  
2 there will be evidential testimony this afternoon,  
3 so let' s break now and we' ll resume in 15 minutes  
4 in our room downstairs to pursue this particular  
5 matter.

6 (Whereupon, at 12:08 p. m. , the hearing  
7 was adjourned until 3:00 p. m. , the same day.)

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AFTERNOON SESSION

PRESIDENT VEEDER: Let's resume.

We now turn to a different matter, which is the motion of the United States of America to exclude certain of Methanex's evidence, and we are dealing with the first part of the argument relating to so-called Regent International documents, and for the record, I'm now going to read into the exhibit numbers of the documents which remain at issue. There is Exhibit Numbers 52 to 60, 64, 66, 151, 153, 155, 159, and 160, 217 to 219, 222 and 223, 226, 258, and 259.

In regard to this motion, we will now be hearing evidence from two witnesses proffered by Methanex, and we welcome the first witness, Mr. Puglisi.

MR. DUGAN: Did you note Number 165?

PRESIDENT VEEDER: If I didn't, I should have done that. I apologize. We'll add that to the list.

ROBERT PUGLISI, CLAIMANT/INVESTOR'S WITNESS, CALLED

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1 In front of you, Mr. Puglisi, you will see  
2 the text of a declaration, and if you're willing to  
3 make that declaration, we invite to you do so now.

4 THE WITNESS: I solemnly declare upon my  
5 honor and conscience that I shall speak the truth,  
6 the whole truth, and nothing but the truth.

7 PRESIDENT VEEDER: Mr. Dugan.

8 MR. DUGAN: Thank you.

9 DIRECT EXAMINATION

10 BY MR. DUGAN:

11 Q. Good afternoon, Mr. Puglisi. How are you  
12 doing?

13 A. Very well, thank you.

14 Q. Could you state your full name for the  
15 record, please.

16 A. Robert Puglisi.

17 Q. Okay. My name is Christopher Dugan. I'm  
18 an attorney with the law firm of Paul Hastings, and  
19 I represent the Methanex Corporation in this NAFTA  
20 arbitration against the United States.

21 Are you familiar with this proceeding?

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1 A. Yes, sir.

2 Q. Could you give us your educational  
3 background, please.

4 A. I have an undergraduate degree from James  
5 Madison University, and I'm a certified fraud  
6 examiner.

7 Q. A certified fraud examiner?

8 A. Yes, sir.

9 Q. Okay. And where are you currently  
10 employed?

11 A. M Morgan Cherry and Associates, LTD.

12 Q. And, excuse me, what type of firm is that?

13 A. Private investigation firm

14 Q. And what is your position in that firm?

15 A. I'm a principal.

16 Q. How many principals are there in the firm?

17 A. There's five.

18 PRESIDENT VEEDER: Mr. Dugan, one moment.

19 These microphones don't amplify very  
20 clearly, so please, if you could just speak up and  
21 a bit louder. Don't feel embarrassed if you are

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1 shouting at us. We'd rather hear what you said.

2 And the same thing, Mr. Dugan.

3 MR. DUGAN: All right, I'll do my best.

4 I'm sorry, what is the last answer?

5 (Whereupon, the Court Reporter read back  
6 the previous answer.)

7 BY MR. DUGAN:

8 Q. There are five principals; is that  
9 correct?

10 A. Yes.

11 Q. And how many offices does Morgan Cherry  
12 have?

13 A. We have six full-time staffed offices.

14 Q. And where are they?

15 A. United States, here in Washington area;

16 and London, Bogota, Colombia, Sao Paulo, Brazil;  
17 Asuncion, Paraguay. What was the last?

18 Q. That's fine.

19 A. I think that's six.

20 Oh, Caracas, Venezuela. Excuse me.

21 Q. And how many employees does Morgan Cherry

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1 have?

2 A. Approximately 50.

3 Q. And is Morgan Cherry's sole line of work  
4 investigations?

5 A. Yes, sir.

6 Q. Could you describe for us some types, some  
7 of the types of investigations that your firm has  
8 engaged in?

9 A. We primarily specialize in intellectual  
10 property protection, trademark counterfeiting,  
11 copyright infringements, patent infringements,  
12 trade secrets theft, but we also handle work in  
13 other areas of business fraud, bank fraud,  
14 embezzlements, and other due diligence matters  
15 surrounding those types of business issues.

16 Q. And could you tell us some of the clients  
17 that you have worked for, if you are at liberty to  
18 do so.

19 A. Well, I'm not really at liberty to  
20 identify clients, but our client base is  
21 exclusively from law firms that represent companies

1 in many of Fortune 500 companies and international  
2 companies.

3 Q. And you work a lot with law firms?

4 A. Yes, sir.

5 Q. Exclusively with law firms or with  
6 corporations as well?

7 A. Well, sometimes directly for the General  
8 Counsel's Office in corporations or executive  
9 officers in a corporation.

10 Q. Have you ever had occasion to work with  
11 government agencies?

12 A. Yes.

13 Q. Could you describe that, please.

14 A. In the course of certain type of  
15 investigations, I have worked in concert with local  
16 Police Departments across the country, Federal  
17 Bureau of Investigation, Customs Department, Drug  
18 Enforcement Administration, other Treasury  
19 Departments, Federal Trade Commission.

20 Q. You said you're a licensed fraud  
21 investigator.

1 A. Certified Fraud Examiner. It's a title  
2 that--there is an association of--worldwide  
3 association of fraud examiners that was created 10  
4 or 12 years ago for people who are involved in  
5 investigations of fraud are required to take  
6 certain examination, have certain experience, be of

7 certain character, and pass their criteria.

8 Q. Is that different from a private  
9 investigator?

10 A. It can be. There are many CPAs that are  
11 also Certified Fraud Examiners. There are other  
12 noninvestigator types, but there are also  
13 investigators who earn that designation.

14 Q. Have you ever testified before?

15 A. Yes, sir.

16 Q. Could you describe that, please.

17 A. I've testified many, many times in state,  
18 local, Federal courts, all over the country, before  
19 the International Trade Commission, before the  
20 United States Patent and Trademark Office, and  
21 various administrative bodies as well.

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1 Q. And how long have you been in the  
2 investigation business?

3 A. Twenty-four years.

4 Q. Have you ever had any problems with any  
5 law enforcement agencies with respect to the manner  
6 in which you or your firm has conducted business?

7 A. No, sir.

8 Q. Did there come a time in your business  
9 when you were retained by Methanex Corporation?

10 A. Yes, sir.

11 Q. Were you retained by Methanex Corporation  
12 directly?

13 A. No, via outside counsel representing them.

14 Q. And when was that? Do you recall?

15 A. Sometime in 1997.

16 Q. And when you were retained, were you given  
17 an explanation of what your job was to be?

18 A. Yes, sir.

19 Q. And initially, what was your job to be?

20 A. My job is to conduct a due diligence or  
21 type of a background investigation into several

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1 organizations that appear to be grassroots-type  
2 lobbying firms that were sending out negative  
3 publicity about Methanex product, and my job was to  
4 find out if there was any sponsorship of those  
5 organizations and who might be behind those  
6 organizations.

7 Q. What were the names of those  
8 organizations?

9 A. One of them is an organization called  
10 Fuels for the Future, and another one was called  
11 Oxy busters.

12 Q. And did you obtain any information about  
13 who was funding those organizations?

14 A. Yes, ultimately. I identified that an  
15 individual by the name of Richard Vind with help  
16 and sponsorship from the Archer Daniels Midland  
17 Corporation were pretty much sponsoring those  
18 companies.

19 Q. So, it's correct to say that you were  
20 retained on behalf of Methanex Corporation in  
21 response to the activities of these two



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1 organizations?

2 A. Yes, sir.

3 Q. Now, other than your retention on behalf  
4 of Methanex Corporation, do you have any other  
5 relationship to Methanex Corporation?

6 A. No, sir.

7 Q. You mentioned Mr. Vind. Did there come a  
8 time when you investigated Mr. Vind in his business  
9 activities?

10 A. Yes.

11 Q. Could you describe what happened, please.

12 A. At some point we identified him as the  
13 moving party, if you will, behind the activities of  
14 those groups, and we conducted various types of  
15 investigation to find out if--how closely allied he  
16 was with any other organizations and the type of  
17 activities he was conducting to see if there was  
18 any other evidence that would, you know,  
19 demonstrate an active and concerted effort against  
20 Methanex.

21 Q. And when you say you conducted

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1 investigations, could you describe what those  
2 investigations consisted of.

3 A. Various things, including, you know,  
4 reconnaissance in different places, identification

5 of witnesses, examination of documents.

6 Q. Could you describe how these documents  
7 were collected, please.

8 A. Some of the documents were collected via  
9 recovery of things that were discarded at  
10 Mr. Vind's place of business at the time.

11 Q. And who recovered them?

12 A. A person that we had retained on our  
13 behalf, a licensed investigator in the state of  
14 California.

15 Q. And are you familiar with this  
16 investigator that you retained in California?

17 A. Yes, sir.

18 Q. And do you know his background?

19 A. Yes, he is a former Federal agent with the  
20 Drug Enforcement Administration, former Assistant  
21 Special Agent in Charge at the Los Angeles Office

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1 of the DEA.

2 Q. And you retained him to collect the  
3 documents that Regent has discarded; is that  
4 correct?

5 A. Yes, sir.

6 Q. And could you describe for us the process  
7 by which that collection of discarded documents  
8 took place.

9 A. Our investigator did--initially did some  
10 work to find out exactly when the documents were  
11 going to be discarded. He would observe when the

12 cleaning crew would take them and deliver them to  
13 the outside dumpster. He would then recover them  
14 from the dumpster at some point, bag them up, seal  
15 the bags, place them in a Fed Ex envelope, and then  
16 overnight delivery them over to me.

17 Q. So, he sent them directly to you?

18 A. Yes, sir.

19 Q. Did this--did your investigator in Los  
20 Angeles ever go into Regent International's  
21 offices?

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1 A. No, sir.

2 Q. And how long a period of time did this  
3 collection of discarded documents span?

4 A. Several months. There was a--the  
5 collection schedule, if I remember right, was  
6 several times a week at least, and this went on for  
7 at least a couple of months.

8 Q. And it's your testimony that at no time  
9 did this investigator ever go into the offices of  
10 Regent International?

11 A. To the best of my recollection, no, he did  
12 not.

13 Q. And the documents that were recovered were  
14 in all cases recovered from public property?

15 A. Yes, sir.

16 Q. Now, when you received each shipment of  
17 documents, can you describe what you did with them.

18 A. Once the documents were received, we noted  
19 that they had been sealed. We opened the seal, and

20 would inscribe a date when we received them on the  
21 Fed Ex package as they were received-- as we

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1 received them.

2           We also then would generate a set of  
3 labels that would serialize the documents from one  
4 to 4,000 or however many there were. We would take  
5 one of those-- we would make those labels in  
6 triplicate. We would take one of those labels and  
7 place it on the back of the original document, and  
8 then in succession make photocopies, two  
9 photocopies at least of each of the documents to  
10 put one in a serialized binder book and one in a  
11 cross-referenced folder of some subject.

12       Q.   Okay. If I could, I'd like you to look at  
13 the book of documents here.

14           Now, if you could look at what's labeled  
15 Tab Number 1.

16           PRESIDENT VEEDER: Just pausing a minute,  
17 is that what we call X5?

18           MR. DUGAN: I'm informed that is what we  
19 call X5, yes.

20           MR. LEGUM: Would it be permissible for us  
21 to take a quick look at it before the witness

602

1 testifies?

2           MR. DUGAN: Certainly. No problem.

3 (Pause.)

4 MR. DUGAN: I'll represent for the record  
5 that the book the witness is looking at is the  
6 collection of the originals of the documents that  
7 have been submitted by Methanex that had been  
8 referred to as the Regent International documents.

9 BY MR. DUGAN:

10 Q. If you look at document Number 1, please.

11 I'm sorry. If you look at document Number  
12 1 and if you will look at the back of document  
13 Number 1, could you tell me if you recognize that  
14 writing at the bottom of the back of document  
15 Number 1.

16 A. That label?

17 Q. Yes.

18 A. Yes, that's the label that we affixed to  
19 every document.

20 Q. Okay. And could you just describe for us  
21 what each of the--what each line means.

603

1 A. The first line was just the title of the  
2 of the target of collection.

3 The second is a number that we embed, what  
4 we would call a case identification number, so that  
5 we know what matter we're dealing with.

6 The third line is the address of  
7 record--and the fourth line are address of record  
8 where the documents were recovered from.

9 The next line that says "received" is the

10 date on which we physically took custody of the  
11 documents, and then the last number is we call it  
12 an exhibit, but it's just a serialized numbering  
13 system for each document.

14 Q. If you turn to the front page of this  
15 document, do you recognize whether this is one of  
16 the documents that you received from your  
17 investigator in California?

18 A. Yes, it is.

19 Q. Okay. Excuse me, could you look at tab  
20 number two.

21 Before I get that, I'm sorry, let me just

604

1 represent for the record that Tab Number 1 that we  
2 were referring to is actually Exhibit Number 52 of  
3 the exhibits that we've been dealing with.

4 All right, tab number two that I would  
5 like you to look at, Mr. Puglisi, is Exhibit Number  
6 53 in the numbers, the serial numbers that we have  
7 been using. Could you look at that, please.

8 Do you recognize that document?

9 A. Yes, sir.

10 Q. Is this one of the documents that you  
11 received from your investigator in California?

12 A. Yes.

13 Q. Could you check document number--tab  
14 number three, which is Exhibit Number 54.

15 Do you recognize that document?

16 A. Yes, sir.

17 Q. Is it a document you received from your

18 investigator in California?

19 A. Yes, it is.

20 Q. Could you look at Tab Number 4, which is

21 Exhibit 55. Is this a document you received from

605

1 your investigator in California?

2 A. Yes, sir.

3 Q. Could you look at tab number five, which

4 is Exhibit 56.

5 Is this a document you received from your

6 investigator in California?

7 A. Yes, sir.

8 Q. Tab number six, Exhibit 57, same question:

9 Is this a document you received from your

10 investigator in California?

11 A. Yes, sir.

12 Q. Tab Number 7, Exhibit 58.

13 Is this also a document you received from

14 your investigator in California?

15 A. Yes, sir.

16 Q. Tab Number 8, Exhibit 59, same question.

17 A. Yes, sir.

18 Q. Tab Number 9, Exhibit 60.

19 A. Yes.

20 Q. Now, if you look at this exhibit, you

21 recognize on the last page of the exhibit the

606

1 identification mark that you put upon it?

2 A. Yes, sir.

3 Q. Now, why, if you know, would this group be  
4 bundled together?

5 A. Any document that--any multipage document  
6 that came in we maintained as one entire exhibit,  
7 so it would be bound together or kept together, and  
8 the last page would take the serial number or our  
9 exhibit number.

10 Q. So, you didn't place an exhibit number  
11 upon every page?

12 A. No.

13 Q. Just upon the last page of each document  
14 as you received it?

15 A. Correct.

16 Q. Okay. If you could turn to Tab 11, which  
17 is Exhibit 64.

18 Do you recognize this as a document that  
19 was received from your investigator in California?

20 A. Yes, sir.

21 Q. Tab number 12, Exhibit 66.

607

1 Do you recognize this as a document that  
2 was received from your investigator in California?

3 A. Yes, sir.

4 Q. Tab number 13, which is Exhibit 151, do  
5 you recognize this as an exhibit--as a document  
6 that was received from your investigator in  
7 California?



8 A. Yes, sir.

9 Q. Turning to Tab 15, Exhibit 153.

10 Do you recognize this as a document that  
11 was received from your investigator in California?

12 A. Yes, sir.

13 Q. Tab number 16, Exhibit 155.

14 Again, do you recognize this as a document  
15 that was received from your investigator in  
16 California?

17 A. Yes, sir.

18 Q. Tab number 18, Exhibit 159, do you  
19 recognize this as a document received from your  
20 investigator in California?

21 A. It looks like it's a copy of one.

608

1 Q. That's correct, it is.

2 But you do recognize it--

3 A. Yes, I do recognize the document.

4 Q. Tab 19, Exhibit 160.

5 Do you recognize this as a document you  
6 received from your investigator in California?

7 A. Yes, sir.

8 Q. Tab number 21.

9 Do you recognize these messages as having  
10 been-- as having been received from your  
11 investigator in California?

12 A. Yes, sir.

13 Q. Now, Mr. Puglisi, is it the practice of  
14 your investigative firm to operate within the  
15 boundaries of the law?

16 A. Yes, sir.

17 Q. Are you aware of any time that anyone in  
18 your firm has exceeded the boundaries of the law in  
19 the course of conducting their duties?

20 A. No, sir.

21 Q. Have you ever been charged by any law

609

1 enforcement agency with a violation of law with  
2 respect to your conduct of your work?

3 A. No, sir.

4 Q. Do you have any reason to believe that  
5 anything that happened with respect to the  
6 collection of these documents in California from  
7 documents discarded by Regent International  
8 violated any law of any state?

9 A. No, sir.

10 Q. So, it's your testimony that these  
11 documents were obtained in a manner that is  
12 perfectly consistent with the laws of the United  
13 States?

14 A. These were lawfully obtained.

15 Q. Okay. Thank you very much.

16 PRESIDENT VEEDER: Mr. Puglisi, I suspect  
17 you're going to be asked some questions by the  
18 United States, but as with all witnesses, we are  
19 going to ask you not to discuss your evidence as,  
20 save, in the presence of the Tribunal. So,  
21 although we're going to break now for a few

1 minutes, please don't discuss your evidence until  
2 you come back before the Tribunal.

3 MR. DUGAN: Mr. Veeder, can I ask a few  
4 more questions?

5 PRESIDENT VEEDER: Yes.

6 MR. DUGAN: Thank you.

7 BY MR. DUGAN:

8 Q. Mr. Puglisi, I'd like to show you a  
9 collection of documents; that as you'll page  
10 through them consist of copies of portions of  
11 Federal Express documents and copies of portions of  
12 other envelopes.

13 Are those familiar to you?

14 A. Yes, sir.

15 Q. Could you explain them, please.

16 A. These are the packages that were sent to  
17 us from our field investigator, and the writing on  
18 them, some of them are mine, are what I describe as  
19 how we kept track of the recovery date and the  
20 receive dates. Basically, they're the Fed Ex  
21 pouches. These are copies of the fronts or the

1 backs of the Fed Ex pouches.

2 Q. Was it your practice to store the  
3 documents that you received in the original Fed Ex  
4 packages or other envelopes in which they were  
5 received?

6 A. Yes, we kept the originals. We would  
7 meticulously copy them one pack at a time, relabel  
8 them, and then put them back in order in the Fed Ex  
9 packages, and then we stored them in a box in our  
10 evidence room where we maintained the custody of  
11 them since that time.

12 Q. And you also put your notations on the  
13 envelope itself?

14 A. Yes, sir.

15 Q. As well as onto the documents themselves?

16 A. Yes.

17 Q. Okay. And all of the documents, just  
18 skimming through them, I know you can't testify  
19 with precision to each one, but all the documents  
20 that are in that package you recognize as being the  
21 types of labels that you put in--that you put on?

612

1 A. You mean from the package of Fed Ex?

2 Q. Yes.

3 A. I recognize my handwriting on some of  
4 them, and some of them I recognize as the  
5 handwriting of the assistant that I had.

6 Q. Do the identifying labels say Regent  
7 International?

8 A. No, not on this. Not on the Fed Ex  
9 package.

10 Now, some of them--some of them bear that  
11 case identification number on them, which would  
12 lead someone out other than myself and my office to  
13 know exactly what case that would be.

14 Q. And the case identification number is  
15 Regent International?

16 A. Yes.

17 Q. Okay.

18 A. Well, no, it's a number that identifies  
19 Regent International, that particular case. It's a  
20 serialized number that we create internally to keep  
21 track of numerically.

613

1 Q. But that number stands only for Regent  
2 International?

3 A. One case, and one only.

4 MR. DUGAN: Mr. Veeder, I can't quite  
5 remember how we marked the document.

6 PRESIDENT VEEDER: We marked the whole  
7 bundle X1.

8 MR. DUGAN: Okay. So, this is Exhibit X1.  
9 I would like to move this into evidence, subject to  
10 the--

11 PRESIDENT VEEDER: Yes, it already was,  
12 but it's now confirmed.

13 MR. DUGAN: Okay. Thank you.

14 BY MR. DUGAN:

15 Q. Next, I would like to hand you a list, a  
16 handwritten list, of dates. Would you look at that  
17 handwritten list of dates and compare them to the  
18 dates that are on the--in X1. The list of dates  
19 that I've handed you is X2. The list of the  
20 documents that you are going through is X1.

21 A. They seem to correspond with the dates on

614

1 the Fed Ex packages.

2 Q. Okay. Would you look at the last four or  
3 five pages in X1 and compare them with the dates in  
4 X2, please.

5 Now, do you recall the time period when  
6 you were collecting documents discarded by Regent  
7 International?

8 PRESIDENT VEEDER: Forgive me, did you get  
9 an answer to your last question?

10 MR. DUGAN: I think he did. I think he  
11 said that these appear to correspond.

12 PRESIDENT VEEDER: It wasn't recorded.

13 MR. DUGAN: I'm sorry.

14 BY MR. DUGAN:

15 Q. Do the dates on the list X2 correspond  
16 with the dates in X1?

17 A. Yes.

18 Q. Now, my next question was, do you recall  
19 the period when you were collecting documents from  
20 Regent International?

21 A. July '97 through beginning of August '98.

615

1 Q. And if you were to look at the boxes of  
2 original documents--let me rephrase that.

3 What happened to the boxes of the original

4 documents that you collected?

5 A. I transferred custody of those to your  
6 colleagues.

7 Q. To Mr. Alex Koff?

8 A. Yes.

9 Q. I would like to draw your attention to a  
10 document that's been marked as X3.

11 Do you recognize that document?

12 A. Yes, I do.

13 Q. Could you tell us what that is, please.

14 A. It's a very crudely drafted custody  
15 transfer document that I drafted on June 7.

16 Q. And the three boxes that you transferred  
17 to Mr. Koff, did they contain all the envelopes  
18 that themselves contained all the original  
19 documents that you received from your investigator?

20 A. Yes, sir.

21 Q. And do the labels that I showed you as X1

616

1 correspond to the envelopes, the Federal Express  
2 and other envelopes that were in the three boxes  
3 that you gave to Mr. Koff?

4 A. Yes, sir.

5 Q. Do you know whether that is all the  
6 original documents that you received from Mr. -- I  
7 mean from your investigator in California?

8 A. All of the documents from the investigator  
9 were in my possession, except for several that were  
10 in the possession of the attorney who retained me.

11 Q. So, as far as you know, all the documents

12 that you received from the investigator in  
13 California were contained in the three boxes that  
14 you gave to Mr. Koff, where they were sent to the  
15 lawyer who retained you in the first place?

16 A. Yes, sir.

17 MR. DUGAN: Okay. Thank you. I have no  
18 further questions.

19 PRESIDENT VEEDER: Thank you, Mr. Dugan.

20 We indicated the United States might want  
21 to take a short break before beginning the

617

1 cross-examination of this witness. Is that still a  
2 request? And if so, how long?

3 MR. LEGUM: Yes. I think that 10 minutes  
4 should be sufficient.

5 PRESIDENT VEEDER: Let's take a ten-minute  
6 break.

7 And we remind Mr. Puglisi, do not discuss  
8 this case. You can talk about the weather,  
9 anything else, but not this case to anyone. 10  
10 minutes. Thank you very much.

11 (Brief recess.)

12 PRESIDENT VEEDER: Let's resume.

13 CROSS-EXAMINATION

14 BY MR. LEGUM

15 Q. Mr. Puglisi, I am Bart Legum, and I'm the  
16 chief of the NAFTA Arbitration Division in the  
17 Office of International Claims and Investment  
18 Disputes at the State Department, and I will be



19 asking you a few questions this afternoon.

20 Under examination by Mr. Dugan, you

21 mentioned that you had testified numerous times; is

618

1 that correct?

2 A. Yes, sir.

3 Q. And that testimony was under oath; is that

4 correct?

5 A. Yes, sir.

6 Q. So, you understand what it means to

7 testify under oath; is that so?

8 A. Yes, sir.

9 Q. What does that mean?

10 A. To tell the truth.

11 Q. Do you have copies of your declarations

12 with you?

13 A. No, sir.

14 MR. LEGUM: I did not bring extra copies.

15 Do you guys have extra copies?

16 (Document handed to the witness.)

17 MR. LEGUM: I'm sorry, is that both of

18 them or is that just the second one?

19 MR. BETTAUER: Here is the first one.

20 THE WITNESS: Now I do.

21 BY MR. LEGUM

619

1 Q. You now have two documents in front of

2 you; is that correct?

3 A. Yes, sir.

4 Q. One of them is a declaration executed on  
5 March 28, 2003; is that correct?

6 A. Correct.

7 Q. And the other is a declaration executed on  
8 May 31, 2004; is that correct?

9 A. Yes, sir.

10 Q. Now, in each of these declarations, you  
11 state that the declaration is under penalty of  
12 perjury and the foregoing is true and correct; is  
13 that so?

14 A. Yes, sir.

15 Q. Does that remain true, to your knowledge,  
16 or do the statements in these declarations remain  
17 true, as you sit here today?

18 A. Yes, sir.

19 Q. Did you read each of these before you  
20 signed them?

21 A. Yes, I did.

620

1 Q. Did you prepare these yourself?

2 A. I may have had some assistance, but I  
3 probably prepared the primary substance of them,  
4 yes.

5 Q. Let me break it up just so that it's  
6 easier for you.

7 With respect to the first declaration,  
8 which is the one-page declaration dated March 28th,  
9 2003, how did you prepare that?

10 A. I don't have a recollection of how I  
11 prepared it, but I may have used a computer word  
12 processing.

13 Q. You wrote it yourself, though?

14 A. Yes, sir.

15 Q. And you reviewed it carefully?

16 A. And I reviewed it and I signed it, yes,  
17 sir.

18 Q. And with respect to the second  
19 declaration, I'll refer to the earlier one as the  
20 first declaration and to the second one as the  
21 second declaration; is that understood?

621

1 A. Yes, sir.

2 Q. With respect to the second declaration,  
3 did you draft that yourself?

4 A. I drafted parts of it, and I believe that  
5 they were--some of it was edited for me.

6 Q. Which parts did you draft?

7 A. I don't have a total recollection, but I'm  
8 sure it was some of the background statements and  
9 number--paragraph seven, some combination thereof.

10 Q. And which parts were drafted for you?

11 A. Probably the language in paragraph eight.

12 Q. Aside from that language, was there any  
13 other part of it that was drafted for you?

14 A. Probably paragraph three.

15 Q. Any other part?

16 A. Pretty much it, to the best of my

17 recollection.

18 Q. And counsel for Methanex drafted the parts  
19 that you referred to; is that correct?

20 A. Yes, sir.

21 Q. Now, before you signed this declaration

622

1 under penalty of perjury, and I'm referring to the  
2 second declaration, you reviewed it; is that  
3 correct?

4 MR. DUGAN: That's asked and answered.

5 THE WITNESS: Yes, sir.

6 BY MR. LEGUM

7 Q. And did you determine that every statement  
8 in these--excuse me, in this, whether drafted by  
9 you or drafted by someone else--

10 MR. DUGAN: Again, that's asked and  
11 answered. I object to that.

12 THE WITNESS: That's correct.

13 PRESIDENT VEEDER: Mr. Dugan, we will  
14 allow some latitude in these questions and if the  
15 question is asked twice, if it's answered the same  
16 way, it doesn't do you any harm.

17 MR. DUGAN: I understand that was the  
18 third time for the record.

19 THE WITNESS: Can you just repeat it for  
20 me and then I will answer it for you.

21 BY MR. LEGUM

623

1 Q. Sure. Did you determine that every  
2 statement in this second declaration was correct,  
3 whether drafted by you or drafted by someone else,  
4 before you signed it?

5 A. Yes, the statements are correct.

6 Q. In your first declaration in paragraph  
7 three, you state that your firm was retained to  
8 investigate the activities of Archer Daniels  
9 Midland and Regent International.

10 Do you see that?

11 A. Yes, I do.

12 Q. When were you retained?

13 A. When was I retained, based on that  
14 statement?

15 Q. I'm reading your statement. It says that  
16 your firm was retained to investigate the  
17 activities of Archer Daniels Midland and Regent.

18 A. Right. And as I had testified, I have  
19 testified, we were originally retained to  
20 investigate two companies that were suspected of  
21 being front companies. Once that part of the

624

1 investigation was concluded and there was some  
2 substantive evidence that showed there were people  
3 sponsoring them, we were then asked in a second  
4 phase to then investigate Archer Daniels Midland  
5 and Regent International.

6 Q. When did the first phase start?

7 A. In--sometime in '97, I'm not sure

8 specifically on the dates.

9 Q. And when did the second phase start?

10 A. Probably sometime in later '97. It was in  
11 the summertime, I believe, so it didn't take that  
12 long. Maybe 60 days, so sometime maybe the early  
13 fall of '97.

14 Q. Can I direct your attention to what's been  
15 marked as X2. Do you have that in front of you?

16 A. Yes, I do.

17 Q. The first date that appears on this is  
18 7/16/97.

19 Do you see that?

20 A. Yes, I do.

21 MR. DUGAN: 7/17 or 7/6?

625

1 THE WITNESS: 16.

2 MR. LEGUM: The second date that appears  
3 there is 2/6/98.

4 THE WITNESS: Yes, sir.

5 BY MR. LEGUM:

6 Q. Did the first phase--was the first phase  
7 around July of 1997?

8 A. Well, it was before that.

9 Q. I see.

10 A. The first phase started before that. I'm  
11 not exactly sure when the crossover occurred, but  
12 there was definitely a--there was a point where the  
13 first phase ended and the second phase began.

14 Q. Who retained you?

15 A. Attorney for Methanex Corporation, outside  
16 counsel.

17 Q. And who was that?

18 MR. DUGAN: Objection. There is no  
19 relevance to that. That's irrelevant, and it's not  
20 probative of anything, and it's being asked  
21 strictly for purposes of harassment.

626

1 MR. LEGUM It is not being asked for that  
2 purpose, I can assure you.

3 PRESIDENT VEEDER: It's a perfectly proper  
4 question, but going to leave it to the witness  
5 whether the witness wants to answer the question.

6 THE WITNESS: Generally, we don't disclose  
7 the names of our clients without getting the proper  
8 authorization, and I haven't received the proper  
9 authorization for that, at least not any--that's  
10 just the way--what our policy is, is to be as  
11 discreet as possible.

12 BY MR. LEGUM

13 Q. On what is your understanding that  
14 Methanex was the client of your client based?

15 A. If I understand the question correctly,  
16 you're saying how I did know that Methanex was the  
17 ultimate client?

18 Q. That's correct. That's my question.

19 A. Based upon our client's identification of  
20 at the outset of the investigation.

21 Q. Did your client identify any other clients

1 of theirs that you were retained in connection with  
2 with this assignment?

3 MR. DUGAN: Objection. Again, I don't see  
4 what the relevance of that question is.

5 PRESIDENT VEEDER: Again, we are going to  
6 leave that to the witness as to whether the witness  
7 wishes to answer that question.

8 THE WITNESS: I'm not sure I understand it  
9 the way it was formulated.

10 BY MR. LEGUM

11 Q. Shall I rephrase it?

12 A. If you would, please.

13 Q. Were there any other clients, ultimate  
14 clients, involved in this assignment aside from  
15 Methanex?

16 A. No. No, sir.

17 Q. What was the scope of this assignment?

18 A. From the beginning phase, or thereafter?

19 Q. Let me make this easier. During--well,  
20 under examination by Mr. Dugan, you referred to  
21 reconnaissance, identification of witnesses, and

1 collection of documents as part of the assignment.

2 A. Yes.

3 Q. Is that Phase I or Phase II?

4 A. That's an amalgam of both. The phases  
5 basically were delineated by the targets, and an



6 objective is to find out is there anyone behind the  
7 first two companies. If you find evidence of that  
8 and can demonstrate that, then we'll discuss what  
9 to do next. So, the scope of it is not--it didn't  
10 start out as a grand operation of any sort. It was  
11 basically developed over time based on the leads  
12 that were generated.

13 Q. So, in both Phase I and Phase II, your  
14 assignment was reconnaissance, identification of  
15 witness, and collection of documents?

16 A. Primarily, yes, and wrapped in a package  
17 of due diligence investigations to corroborate  
18 things.

19 Q. And the difference between Phase I and  
20 Phase II was that in Phase I the target were the  
21 two grassroots organizations that you identified;

629

1 is that correct?

2 A. Yes, sir. Yes, sir.

3 Q. And in Phase II the targets were Regent  
4 International and ADM; is that correct?

5 A. Yes, sir.

6 Q. What reconnaissance work did you do with  
7 respect to Regent International?

8 A. Primarily examining where they had  
9 offices, what kind of activities were going on in  
10 the offices, limited surveillances determining who  
11 their employees were, where they were going, and if  
12 they had any other front companies that were

13 operating in the United States or outside the  
14 United States.

15 Q. And how did you conduct that  
16 reconnaissance?

17 A. Physical surveillance, the collection of  
18 the discarded documents, electronic database  
19 researching, contacts with people in the industry,  
20 things like that.

21 Q. And how did you conduct the identification

630

1 of witnesses? Did you do anything different?

2 A. Through the same means, basically, but...

3 Q. And collection of documents was one part  
4 of what you described earlier as reconnaissance?

5 A. Correct, yes, sir.

6 Q. What remuneration did you receive for this  
7 work?

8 A. We were paid on a semi-regular basis. I  
9 can't tell you what the sum total was. I don't  
10 have that off the top of my head. We were paid on  
11 a retainer basis, you know, partial retainer basis  
12 and then submitted invoices periodically.

13 Q. Was this a flat hourly rate, or was it--

14 A. Hourly rates and then, you know, any  
15 expenses that you might incur, telephone calls, and  
16 mileage fees, and Fed Ex charges, things like that.

17 Q. Were there any bonuses or other  
18 remuneration that was tied to the results of your  
19 investigation?

20 A. No, we generally don't work on that

21 premise. We work from based on hourly basis, we

631

1 give a client an estimate based on our experience  
2 as to what it will take to complete a particular  
3 objective, and then we go from there.

4 Q. How often did you speak with your client  
5 in connection with this assignment?

6 A. It was a protracted assignment, so at the  
7 beginning, probably not but once a week. Sometimes  
8 it would be as the investigation progressed, it was  
9 probably--some days it could be two or three times  
10 a day, the next week it could be once a week again,  
11 and there were--it's hard for me to recall exactly  
12 how much and when.

13 We would update them, especially on the  
14 collection process here, we would update them on  
15 what we would have, what we had collected, how it  
16 fit into the pieces, and we would provide, you  
17 know, copies of certain documents, relevant  
18 documents.

19 Q. I would like to--well, actually, I believe  
20 you testified to when your assignment began. Did  
21 it end?

632

1 A. It ended, yeah. It concluded at some  
2 point.

3 Q. When was that?

4 A. Sometime in I think late '98. I don't  
5 really have a firm recollection as to when. It was  
6 definitely beyond the scope of this, these dates.

7 Q. You are referring to X2?

8 A. Yes.

9 Q. And you're saying that the conclusion of  
10 your assignment was after August 3, '98?

11 A. Correct.

12 Q. Sometime towards the end of that year?

13 A. If I recall correctly, yes.

14 Q. I would like to refer you to paragraph  
15 four of your first declaration.

16 A. Yes, sir.

17 Q. Now, you referred to people associated  
18 with the firm M Morgan Cherry and Associates?

19 A. Yes.

20 Q. What other people at the firm worked on  
21 this assignment?

633

1 A. I had some administrative people that  
2 assisted. There was an analyst that was also  
3 helping me with some things, and then there was a  
4 field investigator.

5 Q. What did the analyst do?

6 A. Basically helped review documents and sort  
7 them out in the context of, you know, what we had  
8 gathered before.

9 Q. And what did the field investigator do?

10 A. Conducted some of the reconnaissance work

11 that we talked about, recovery of the discarded  
12 documents.

13 Q. I would like to direct you to your second  
14 declaration and paragraph three--excuse me,  
15 paragraph five.

16 Do you have that in front of you?

17 A. Yes, sir.

18 Q. You refer there to a licensed California  
19 private investigator.

20 A. Um-hmm.

21 Q. Is that the field investigator you were

634

1 just referring to?

2 A. Yes, sir.

3 Q. So, is he employed by your firm?

4 A. No, he's a contract employee.

5 Q. Does he work for a firm, himself?

6 A. He works for himself. He may call it his  
7 by his name but he doesn't work for any larger  
8 company. He works for himself.

9 Q. And who is he? What's his name?

10 A. His name is Terry Dunne.

11 Q. Does he have any employees with his firm?

12 A. He didn't at the time.

13 Q. What was the scope of his work?

14 A. Basically to conduct a reconnaissance at  
15 that location and to develop if there are other  
16 locations in the California area, Southern  
17 California area.

18 Q. And what was his remuneration?

19 A. He was paid on an hourly basis as well, by  
20 us.

21 Q. Now, did he have any other engagements

635

1 aside from what you testified to in connection with  
2 this assignment?

3 A. Not that I can recall, no.

4 Q. How often did you speak with him?

5 A. I spoke with him daily. There were some  
6 times when we may have skipped a couple of days,  
7 but usually we would talk before each  
8 reconnaissance trip and then afterwards, and we had  
9 frequent discussions.

10 Q. So, is this daily, essentially, from 1997  
11 through the end of 1998?

12 A. Not daily from that period, but there were  
13 periods in that within that time frame, yes, I  
14 spoke to him every day about this.

15 Q. Did you speak in person or by telephone?

16 A. By telephone.

17 Q. Did you ever speak in person about this?

18 A. No.

19 Q. Did he ever employ subcontractors, to your  
20 knowledge?

21 A. No.

636

1 Q. Did your--well, let me back up.

2 Did you have a written contract with him?

3 A. No.

4 Q. Was it a term of your oral contract that  
5 he consult with you before contracting with any  
6 subcontractors?

7 A. Basically, yes. One of the reasons we do  
8 that is because we work within a budget; so if we  
9 are going to have an expense that says there's two  
10 or three people out there and we only authorize  
11 one, then we are generally not very happy.

12 Q. But was there anything in your  
13 relationship that would prevent him from hiring  
14 someone else to do the work that you had hired him  
15 to do, at least in part?

16 A. There was because in terms of our contract  
17 we talk about how we were going to need to maintain  
18 custody of this so that he needed to be the one to  
19 recover the documents, package the documents, send  
20 the documents.

21 Q. Referring back to paragraph five of your

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1 second declaration, you referred to Regent  
2 International offices at 910 East Bird Street in  
3 Brea, California.

4 Do you see that reference?

5 A. Yes, sir.

6 Q. Have you ever been there?

7 A. No.

8 Q. Can you draw us a diagram of what the

9 property looks like?

10 A. I can't now, but at one point Mr. Dunne  
11 had for me.

12 Q. But you don't have that with you?

13 A. No.

14 Q. Do you know where Mr. Dunne collected the  
15 documents?

16 A. He advised me that he found it in a  
17 dumpster that was a communal dumpster for the  
18 building in a public area.

19 Q. I'm sorry, I couldn't hear that.

20 A. In a public area.

21 Q. In a public area.

638

1 A. Um-hmm.

2 Q. Where was this public area?

3 A. Adjacent to the building, parking lot.

4 Q. So, it's an office building; is that  
5 correct?

6 A. Yes, sir.

7 Q. And your testimony is that based on what  
8 you were told, there is a parking lot behind the  
9 building; is that correct?

10 A. Yes, sir.

11 Q. And in the parking lot there is a  
12 dumpster?

13 A. Yes, sir.

14 Q. Did Mr. Dunne ever enter the building, the  
15 office building?

16 A. He may have entered into the lobby,



17 checked the directory to make sure he knew what  
18 offices, but I don't remember specifically.

19 Q. And how do you know that he entered the  
20 lobby that one time?

21 A. Because--

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1 MR. DUGAN: I believe he just testified he  
2 didn't know specifically.

3 MR. LEGUM: Mr. President, could we have  
4 the witness answer the questions rather than  
5 counsel.

6 PRESIDENT VEEDER: Put the question again.

7 THE WITNESS: I have--I have the question.  
8 I have a recollection of us discussing on one of  
9 those first times to make sure that they were still  
10 in the building. You know, we had an address that  
11 came off of either a corporate document or another  
12 type of government document. Sometimes those are  
13 outdated, so more than likely that was when he went  
14 into the building is to go in and make sure on the  
15 directory we have somebody or on the door of the  
16 office that we have who we were looking for.  
17 That's my recollection.

18 BY MR. LEGUM:

19 Q. How do you know that he did not go into  
20 the building after that point?

21 A. Basically because we discussed it. We

1 didn't want to--we had an operation that we didn't  
2 want to jeopardize, and we talked about the  
3 procedure that he used to collect the documents,  
4 and prohibited him from going into the building  
5 because that would potentially expose him

6 Q. But you weren't there; right?

7 A. No, I was not.

8 Q. When he was collecting this information?

9 A. No, I was not.

10 Q. So, you don't personally know whether he  
11 actually went into is that building after that  
12 point?

13 A. I know what he told me. He told me the  
14 process by which he recovered the documents, and I  
15 have no reason to believe he wasn't truthful.

16 Q. Did he ever contact any employees of  
17 Regent?

18 A. No.

19 Q. Did he ever contact any employees of the  
20 landlord?

21 A. No.

1 Q. Did he ever contact employees of the trash  
2 agency?

3 A. No.

4 Q. Now, was this dumpster owned by a  
5 municipal trash collecting authority or was this--

6 A. I don't--I don't recall.

7 Q. So, you don't know whether it was owned by  
8 a private company or by the public--

9 A. I don't recall.

10 Q. You stated that the parking lot was a  
11 public space.

12 A. Yes.

13 Q. How do you know that?

14 A. Actually, I have a recollection of seeing  
15 a photograph he may have taken of the place. It  
16 was not gated. It was a flat surface with an exit.  
17 There was no security guard on the premises, so it  
18 wasn't a--there was a flow on traffic outside to  
19 and from the building. There was no restriction as  
20 to who could enter the parking lot.

21 Q. But this wasn't public property; right?

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1 The parking lot was--

2 A. I don't know what you mean by public  
3 property. If you mean owned by the government, or  
4 I don't know what you're talking about, but it  
5 was--this was not a property that had posted signs  
6 private property, keep out.

7 Q. It wasn't a street, though; is that  
8 correct?

9 A. It was adjacent to the street, if I  
10 recollect.

11 Q. But it wasn't on the curb of the street;  
12 is that correct?

13 A. No, it was in a parking lot.

14 Q. Was it next to the building, or was it

15 further away from the building?

16 A. Depends how you define that. It was more  
17 than a few steps away from the building. I don't  
18 know the exact measurements.

19 Q. What documents were collected?

20 A. Well, the specimens that I testified about  
21 are some of the ones that were collected. There

643

1 were others, too.

2 Q. I guess I need to be more clear.

3 What was the assignment of Mr. Dunne? Was  
4 it to collect all of the documents that he found in  
5 the dumpster?

6 A. It was to collect whatever he could find  
7 in the dumpster that related to the target company.  
8 Sometimes he would collect documents that did not  
9 apply. Those would be--those were left or  
10 discarded.

11 Q. But he was not selective in what documents  
12 he collected; is that correct?

13 A. Well, he was selective. He was  
14 specifically looking for the documents from the  
15 target company that came out of that office.

16 Q. I should correct myself. He was not  
17 selective--he did not choose between documents that  
18 came from those target companies; is that correct?

19 A. I'm not sure I understand that. He didn't  
20 choose--if you could rephrase that, maybe I could  
21 answer it better.

1 Q. If he found something from the target  
2 companies, he would take it, no matter what it was?

3 A. Yes.

4 Q. Was his assignment limited to documents?

5 A. Well, it was limited to whatever came out  
6 of there. Sometimes he would get other things,  
7 too. Debris. I believe there was a discarded like  
8 a secretary's phone book or receipt book-type  
9 thing. There were tossed magazines sometimes.

10 Q. And he would collect those?

11 A. Yes.

12 They were amongst all of the things that  
13 were--you know, that had been discarded.

14 Q. I would like you to refer to the binder of  
15 original documents that corresponds to what has  
16 been marked as X5.

17 Do you have that in front of you?

18 A. Yes, sir.

19 Q. Could you turn to Tab 13, please.

20 A. Yes, sir.

21 Q. Now, there is a sticker on the back of the

1 second page there.

2 A. Yes.

3 Q. I know that you explained this while

4 Mr. Dugan was examining you, but would you mind

5 just explaining this again because I'm not sure  
6 that I followed it. What does this signify here?

7 A. What the actual label, what it means?

8 Q. Yes, please.

9 A. It identifies the name of the target, a  
10 case identification number, a location where the  
11 recovery was made, the receive date when we  
12 received this particular document, and then  
13 randomly assigned or sequentially assigned exhibit  
14 number.

15 Q. So, for this particular document, you  
16 received it on the 9th of July 1998; is that  
17 correct?

18 A. Yes.

19 Q. If you would turn to the first page of  
20 that document, please.

21 A. Yes, sir.

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1 Q. Would you take a look towards the bottom  
2 of that page.

3 A. Um-hmm.

4 Q. You see there's a little line there that  
5 indicates what appears to be a document save date  
6 or print date, July 30, 1998, 3:17 p.m.

7 Do you see that?

8 A. Yes, sir.

9 Q. How do you explain the fact that you  
10 received this document, according to your records,  
11 on the 9th of July, 1998, and yet the document  
12 appears to have been printed out on the 30th of

13 July?

14 A. Well, the problem is this one doesn't  
15 have--doesn't have a label. The back page of it  
16 has the label which means, if I recall, sometimes  
17 things came out in--out of order, and then we would  
18 match the documents together. This document may  
19 not have been recovered at the same time as this  
20 particular document. This document is a  
21 handwritten description of what we found here.

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1 Q. I'm sorry, I don't understand what you  
2 mean when you say they came out out of order. What  
3 does that mean?

4 A. Well, on a particular day, this may have  
5 been recovered. Three days later this could have  
6 been recovered.

7 Q. You're saying that--I'm just repeating  
8 what you're saying so that the typewritten record  
9 is clear.

10 A. Um-hmm.

11 Q. You're saying that the handwritten note  
12 page may have been recovered on a different date  
13 than the typed page, which is a draft document? Is  
14 that correct?

15 A. Yes, well very well could have been, yes,  
16 sir.

17 Q. Well, how do you know where this draft  
18 document came from if you didn't put a label on it  
19 and it came separately from this other document?

20 A. Because I recall this document  
21 specifically. It was a document of noted interest.

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1 And another document similar to this,  
2 without the draft stamp and without the fax trailer  
3 was also recovered.

4 Q. Now, you referred to a fax trailer.

5 A. I could be mistaken. That may be a file  
6 creation date, as you described it here at the  
7 bottom of what it says 7/30/98.

8 Q. I see, yes. It's that 7/30/98, 3:17 p.m.  
9 That's the line that you're referring to.

10 A. Correct.

11 Q. Now, you say you remember this particular  
12 document.

13 A. Yes, sir.

14 Q. Now, why is that?

15 A. Because it involved several people of  
16 pertinent interest involved in this case, including  
17 the ADM people, and it also involved a meeting with  
18 I think at the time it was Congressman Toricelli.

19 Q. Congressman Toricelli, is he referenced on  
20 this somewhere?

21 A. There are other documents that indicated

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1 that there were--he was going to attend this  
2 meeting as well.



3 Q. So, you're saying that the reason is these  
4 two documents didn't come together; is that what  
5 your testimony is?

6 A. It could appear that way.

7 Q. And there isn't a stamp on the draft  
8 typewritten document; that's correct, isn't it?

9 A. Correct.

10 Q. So, you don't have any written basis for  
11 the chain of custody for this document; is that  
12 correct?

13 A. Not as this one exists, but like I said,  
14 there is another document that is this same  
15 document without the draft stamp and without the  
16 fax trailer file identification.

17 MR. LEGUM: All right. I would like to  
18 refer the witness to the corresponding document  
19 that's been offered into evidence in this case by  
20 Methanex, which is JS Tab 151. And we have copies  
21 of that, which I believe can be distributed right

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1 now so that people don't have to get up and get  
2 their binders.

3 (Document handed to the witness.)

4 BY MR. LEGUM:

5 Q. I'm just waiting for them to distribute it  
6 to the Tribunal.

7 All right. Do you now have that document  
8 in front of you?

9 A. Yes, sir.

10 Q. And I'm going to refer to that document as

11 Tab 151 because that's the way it's been offered  
12 into evidence.

13 A. Okay.

14 Q. Is that the same document as what you have  
15 in front of you?

16 A. As of--from this exhibit book?

17 Q. Yes. I'm sorry. I didn't see that you  
18 closed the binder. If you could open that again to  
19 Tab 13.

20 A. It appears to be slightly different.

21 Q. And what is that difference?

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1 A. There is a--in fact, there is another fax  
2 trailer, like this had been sent again from  
3 somebody to another party at the bottom. It says  
4 August 4, '98.

5 Q. So, the fax trailer at the bottom of the  
6 page which says August 4, '98, 1013, page two--

7 A. Um-hmm.

8 Q. --that does not appear on the copy that  
9 you have; is that correct?

10 A. Correct.

11 Q. Excuse me, the copy that's tab 13.

12 A. Correct.

13 Q. Do you have any information as to how that  
14 fax leader got on there?

15 A. Multiple versions of documents would come  
16 out--out of this office building. Sometimes you  
17 would see the same exact document and then a slight

18 handwritten notation or somebody's initials on it,  
19 and it would come out either subsequent to or prior  
20 version of it. There are multiple versions.

21 And there was also a problem that we noted

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1 as we were doing the analysis of all these  
2 documents; they would sometimes not know how to run  
3 their machines. They would have a fax trailer that  
4 had no phone number on it. Sometimes it would have  
5 the wrong date on it, the time would be thrown off  
6 of it.

7 So the versions that came into these  
8 documents, sometimes there were slightly altered  
9 versions. Apparently there were works in progress,  
10 and we had simply recovered different stages of the  
11 same document.

12 Q. I would like the record to reflect the  
13 fact that there has been no version of this  
14 document, no original of this document that's been  
15 produced to the Tribunal or to the United States as  
16 of this time.

17 PRESIDENT VEEDER: I think the record  
18 should show in your right hand you're holding a  
19 copy of Exhibit 151?

20 MR. LEGUM Yes, thank you very much.

21 BY MR. LEGUM

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1 Q. Now, Mr. Puglisi, did you ever fax  
2 documents to your client?

3 A. Not that I recall. Most of the time if we  
4 sent them documents there were copies, and we put  
5 them in an overnight pouch, Fed Ex pouch, courier  
6 pouch.

7 Q. So, you don't believe that this fax leader  
8 could have been the leader that showed on the  
9 document when you faxed it to your client?

10 A. No, because this is not how our fax  
11 machines operates. Our fax machine does not throw  
12 a trailer on the bottom part of the page. It has a  
13 different setup.

14 Q. Now, this appears to be a draft of an  
15 itinerary for Tuesday, August 4, 1998; is that  
16 correct?

17 A. It appears that way to me, too, yes, sir.

18 Q. And the meeting begins at 9 a.m. that day,  
19 doesn't it?

20 A. That's what it says at the top of the  
21 page. Actually, it says that's when they depart,

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1 meeting starts thereafter.

2 Q. From Chicago?

3 A. Right.

4 Q. Do you have an understanding as to why  
5 someone would be faxing the itinerary to Mr. Vind's  
6 company in California if he's already in Chicago?

7 A. Well, we don't know that he's already in  
8 Chicago.

9 Q. And why don't we know that?  
10 A. Because we weren't standing at the  
11 meeting.  
12 Q. I see.  
13 You testified that you brought this  
14 document to the attention of your client; is that  
15 correct?  
16 A. Yes, sir.  
17 Q. And that would have been in 1998; is that  
18 correct?  
19 A. Yes, sir.  
20 Q. I'm done with that document now. You  
21 could put it down.

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1 I would like to direct your attention to  
2 paragraph five again of your second declaration.  
3 You state there, quote, The documents were  
4 forwarded to me via Express Mail overnight delivery  
5 in a sealed box, closed quote.  
6 Do you see that statement?  
7 A. Yes, sir.  
8 Q. That's not true, is it?  
9 A. That's partially true. Sometimes they  
10 would send the documents in the pouches, in the  
11 soft Fed Ex pouches, crammed into a box.  
12 Q. But we referred earlier to X2, which shows  
13 a lot more than one sealed box, doesn't it?  
14 A. I don't believe it referred to a box at  
15 all.

16 Q. I beg your pardon?  
17 A. I don't believe it referred to a box.  
18 Q. My point here is that there was more than  
19 one time.  
20 A. The point is that they came by Fed Ex.  
21 I'm not exactly sure what the-- each pouch was until

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1 you look at the originals. The originals that we  
2 have are in Fed Ex what they call soft pouches.  
3 Some of them came, because of the size of them, in  
4 boxes as well, but some came only in the pouch, the  
5 Fed Ex pouch.  
6 Q. So, some of them didn't come in boxes?  
7 A. Correct.  
8 Q. And there was more than one box that was  
9 sent; is that correct?  
10 A. I believe so.  
11 Q. And there were certainly more than one  
12 package that was sent?  
13 A. Well, there's certainly more than one  
14 package was sent.  
15 Q. I would like to refer you to what's been  
16 marked as X1.  
17 Do you have that in front of you?  
18 A. Yes, sir.  
19 Q. Now, you testified earlier that you marked  
20 the date that you received these things.  
21 A. Um-hmm.

1 Q. And just looking at the first page, did  
2 you receive that on the 6th of July, 1997?

3 A. That's what that means, yes, sir.

4 Q. Look to the right. There is a Federal  
5 Express label.

6 A. Yeah. Now, you can see the discrepancy  
7 there. This is called human error, so  
8 somebody--that's--may or may not be my writing.  
9 Somebody transposed the incorrect year on the front  
10 of the--in the front of the pouch.

11 Q. So, the year is incorrect. This was not  
12 received in 1997; is that your testimony now?

13 A. No--I'm not sure until--I would actually  
14 have to check to make sure that the Fed Ex--I'm  
15 looking at a copy. I have to look at the actual  
16 original, and then I could tell you that.

17 Q. The date on the label is 7 July 1998; is  
18 that correct?

19 A. Yeah, that's the delivery date. This  
20 is--on the front it says recovered 7/6/97, he puts  
21 it in the pouch, whatever other container, sends it

1 off to Fed Ex, and it arrives the next day.

2 Q. Okay. So, who wrote "recovered" on there?  
3 Did you write that?

4 A. It doesn't look like my writing on that  
5 one. That could be Mr. Dunne's.

6 Q. Was it Mr. Dunne's practice, then, to

7 write on these packages the date of recovery?

8 A. Yes.

9 Q. Now, we looked earlier at Tab 13, and you  
10 had a little label on the back of that there.

11 Now, the date that's marked there, is that  
12 the date of recovery, or is that the date that you  
13 received it?

14 A. If you're talking about my labels--

15 Q. Yes.

16 A. --my labels are the date we received it.  
17 We took custody of the documents.

18 Q. So, if you wanted to figure out the date  
19 of recovery, you would have to go back and look at  
20 the package where Mr. Dunne had written that.

21 A. Correct.

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1 Q. Now, did these--he just wrote that on the  
2 outside of the Federal Express package.

3 A. He would seal, he'd put the documents in,  
4 seal them.

5 Q. And then write on the outside the date of  
6 recovery.

7 A. Right, right.

8 Q. If you could just flip five pages into  
9 that exhibit, do you have a page in front of you  
10 that says deliver by 11 February '98?

11 A. Correct.

12 Q. Perhaps I just didn't understand your  
13 testimony earlier, but where was it marked with the



14 date of recovery is on this?

15 A. It might not be on this particular side of  
16 the pouch.

17 Q. How would you know what the date of  
18 recovery is?

19 A. Because it could be on the other side of  
20 the pouch.

21 The practice was that he would make the

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1 recovery, and then send it out so that we would get  
2 it the very next day, but this is only a photocopy  
3 of one side of that pouch. I don't want to say  
4 that it was a hundred percent uniform that always  
5 we put the date of recovery and receive dates on  
6 the same place on the package at the same point  
7 because that's not accurate. So, the front might  
8 have had the date of recovery. The back might have  
9 the date received.

10 Q. Is there any way to figure out from this  
11 exhibit which--what the date of recovery was for  
12 the stuff that was in this envelope?

13 A. Not specifically, but it could very well  
14 be that it was the 10th of February or could have  
15 been--it probably was the 10th of February.

16 Q. Probably. That's your testimony?

17 A. You asked me to make a conjecture, and I  
18 just did.

19 Q. Just so we are clear, I'm not asking to  
20 you make any conjecture at any point during this  
21 testimony.

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1 A. The way you phrased that question, you  
2 did.

3 Q. I would like to direct you to paragraph  
4 three of your statement.

5 A. Second or first?

6 Q. I'm sorry, the second statement.

7 Do you see at the end of that, you say,  
8 quote, I refer to the documents referenced in  
9 Section 1 and Section 2(a) of the motion  
10 collectively as the Vind documents?

11 A. Yes.

12 Q. How did you know what documents were  
13 referenced in Section 1 and Section 2(a) of the  
14 motion that's referred to there?

15 A. Counsel had provided me with copies of  
16 specimens.

17 Q. Did they provide you with all of the  
18 documents that were referenced there?

19 A. Yes, sir.

20 Q. Did you ever actually look at the motion  
21 before signing this?

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1 A. I believe I read the motion, and then  
2 separately looked at all the documents.

3 MR. LEGUM All right. Could we have  
4 distributed to the witness a copy of the motion,

5 please, and then to opposing counsel.

6 Does the Tribunal require another copy of  
7 this? Would that be convenient?

8 BY MR. LEGUM

9 Q. Do you have that in front of you now?

10 A. Yes, sir.

11 Q. Now, and I would just note for the record  
12 the date on that is May 18, 2004.

13 Is this the motion that you read?

14 A. It appears to be. I can't say a hundred  
15 percent that it is, but it appears to be.

16 Q. Could you turn to page three, please.

17 Do you have that in front of you?

18 A. Yes, sir.

19 Q. You see there's footnotes at the bottom of  
20 the page, and the third footnote refers to a number  
21 of documents.

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1 Do you see that?

2 A. Yes, sir.

3 Q. Are those the documents that you  
4 understood to be the Vind documents that you were  
5 referring to in your statement?

6 A. I don't have no way of telling from just  
7 this footnote.

8 Q. What more would you need to know?

9 A. I would need to see the documents.

10 Q. Did you review all of the documents that  
11 are referred to here before you signed your

12 statement?

13 A. I reviewed the documents that were  
14 presented to me.

15 Q. But you didn't check to see whether the  
16 documents that were presented to you were the same  
17 as the documents that are referenced here; is that  
18 correct?

19 A. That are referenced?

20 Q. In that footnote.

21 A. No, I did not cross-reference that.

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1 Q. What was the basis for your statement,  
2 then, that--in paragraph three of your declaration,  
3 "I refer to the documents referenced in Section 1  
4 and 2(a) of the motion collectively as the Vind  
5 documents"?

6 A. Basically, the lawyers representing  
7 Methanex presented to me that a subset of the  
8 documents that we had collected had been entered  
9 into this hearing. I took on faith that what they  
10 told me was accurate. I did not go back and  
11 cross-reference the footnotes with the documents  
12 that were presented to me.

13 Q. I see. So, you took their word for it; is  
14 that correct?

15 A. In a way of speaking, yes, sir.

16 Q. Just like you took Mr. Dunne's word for  
17 the fact that he never entered Regent's offices; is  
18 that correct?

19 A. Mr. Dunne is a 30-year veteran of the

20 Federal law enforcement, highly decorated, former  
21 Assistant Special Agent in Charge of the Drug

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1 Enforcement Administration, one of their largest  
2 offices. When he tells me something, I believe  
3 him.

4 Q. But you took his word for it?

5 A. Yes, I did.

6 Q. I would like you to turn to binder of  
7 original documents you have there. And turn to Tab  
8 24. Is that one of the Vind documents that you  
9 referred to in your second declaration?

10 A. It appears to be.

11 Q. How about the next document? Is that one  
12 of the Vind documents that you referred to in your  
13 declaration?

14 A. This is one of the documents that I--I  
15 hadn't identified this before. This document  
16 didn't seem to be familiar. Didn't bear my  
17 markings, and it wasn't familiar to me.

18 Q. So, that's not one of the Vind documents  
19 that you referred to?

20 A. I don't believe so.

21 Q. Did you review that before you signed your

666

1 declaration?

2 A. This particular document?

3 Q. Yes.

4 A. I don't believe I had this document.

5 Q. How about the next one?

6 A. I don't see anything that would--makes me  
7 recall this document, either.

8 Q. Okay. How about the one after that? And  
9 just so we are clear, you are looking at Tab 27.

10 A. 27. I'm not certain about this document.  
11 It doesn't have my markings, either.

12 Q. How about Tab 28?

13 A. I can't positively identify this one,  
14 either.

15 Q. Tab 29?

16 A. I cannot identify this one, either. There  
17 were some documents that I know we recovered that  
18 were formed or formulated in the same manner as  
19 this, but I don't--recall this specific document  
20 specifically.

21 Q. Let's turn back to Tab 24 just for a

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1 moment. You testified earlier that this was one of  
2 the documents that you referred to as--

3 MR. DUGAN: Objection. I think what he  
4 said was it appears to be.

5 MR. LEGUM: The record will be clear as to  
6 what he testified to, but please correct that if  
7 that's not accurate.

8 THE WITNESS: Yeah, because there's two  
9 separate documents in this 24 document protector.

10 BY MR. LEGUM

11 Q. So, is one of them -

12 A. They don't--neither bears my markings, so  
13 without those, I can't specifically say. There are  
14 some documents that I can definitively say: I have  
15 seen this document before, we processed that  
16 document. I can't specifically say that with  
17 either of these.

18 Q. What about 30 and 31? Can you just take a  
19 quick look at those.

20 A. 30, I don't have a good recollection of  
21 this. I don't see my markings on it. I'm not sure

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1 this was anything that I had recovered, had access  
2 to, or otherwise.

3 I recall that we had some version of one  
4 of these message books, but I'm not sure if it's  
5 this message book. It's not marked the way we  
6 normally would mark it. So, I can't say  
7 specifically that this is something I have seen.

8 Q. All right. Could you turn back to  
9 paragraph five of your report. You refer there to  
10 the Vind documents.

11 A. Yes, sir.

12 Q. It's true that if the documents you just  
13 looked at are considered to be part of the Vind  
14 documents, your statement here isn't accurate.

15 A. My statement was based on the documents  
16 that were supplied to me by Methanex counsel in PDF  
17 format. And those documents I could locate and

18 provide the originals for. Those documents are the  
19 ones that I'm describing at paragraph five.

20 Q. Turn to paragraph six, please. You state  
21 that I understand that in the State of California

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1 anyone discarding documents relinquishes all of  
2 their ownership and privacy rights in those  
3 documents.

4 Do you see that?

5 A. Yes, sir.

6 Q. What's the basis for your understanding?

7 A. I have examined these issues with this  
8 type of investigative method. And while I cannot  
9 quote you the different case law, I have in my  
10 office a folder of case law pertaining to this, and  
11 some of those were State of California cases that  
12 set precedents regarding the discarding of  
13 documents and curtilage and all of that, all that  
14 goes into those rulings.

15 Q. So tell me, if the trash is located in the  
16 offices of a company--

17 A. You mean inside?

18 Q. Yes.

19 A. In the interior?

20 Q. Correct.

21 Is it legal to go in and look at that

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1 trash?

2 A. No, that's not appropriate.

3 Q. What if it's inside the building?

4 A. That's not necessarily appropriate,  
5 either. It may be if you're the building owner, or  
6 if you have a--there may be some circumstances.

7 Q. What if it's behind the building but in a  
8 fenced-in area?

9 A. You're asking me to give you a legal  
10 opinion of the cases that are in the State of  
11 California. I'm not really prepared to do that.

12 Q. So, you're not sure about that one?

13 A. About--

14 Q. The question that I just asked.

15 A. I'm sure that there are circumstances  
16 where there--if the gated area was open to the  
17 public and not secured by a lock, you could  
18 possibly make a case for that.

19 Q. Turn to paragraph seven, please. You  
20 state that, "At no time during the investigation  
21 into the activities of Archer Daniels Midland and

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1 Regent International that I or anyone else that I  
2 supervised unlawfully obtained documents from the  
3 premises of Regent International or Richard Vind. "

4 What was the basis for that statement?

5 A. The policy that we set when we started  
6 that investigation, my discussions with Mr. Dunne  
7 thereafter, and his description of the method that

8 he used.

9 MR. LEGUM I have no further questions.

10 PRESIDENT VEEDER: Thank you.

11 Mr. Dugan, do you have questions?

12 MR. DUGAN: I do have few questions on

13 redirect.

14 PRESIDENT VEEDER: Please proceed.

15 REDIRECT EXAMINATION

16 BY MR. DUGAN:

17 Q. Mr. Puglisi, could you turn to Tab 13.

18 A. Okay.

19 Q. Would you take a moment to read this

20 document, please.

21 (Witness reviews document.)

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1 A. Yes.

2 Q. Now, I believe you testified previously

3 that this document involved Representative

4 Toricelli; is that correct?

5 A. That was my recollection. There may have

6 been another similar itinerary, but there was a

7 particular meeting, and I believe it was in this

8 time frame where they were bringing him in to

9 introduce him to the ADM people.

10 Q. Who did this meeting involve?

11 A. This particular one in Tab 13?

12 Q. At Tab 13, yeah.

13 A. It looks like it involved Dwayne Andreas,

14 Alan Andreas, Marty Andreas, Roger Listenberger,

15 Rick Reisling, John Burton, Dick Vind, Bob Daneen.

16 Q. How about down at the bottom?

17 A. Gray Davis, Dan Weinstein, John Farkas.

18 Q. Now, do you remember this particular

19 document involving Gray Davis?

20 A. Yes, sir.

21 Q. And could you explain again why this

673

1 sticks in your memory.

2 A. Part of this system that had been  
3 developed by ADM and Regent involved using funds  
4 from particular activities to contribute to certain  
5 politicians, and there was documentary evidence  
6 that showed that the politicians would respond with  
7 personal letters, with phone messages. There was a  
8 good deal of activity between Vind and his group  
9 and various politicians that had impact on ethanol  
10 and other--the MTA contracts in Los Angeles, things  
11 like that.

12 Q. And as we sit here today, do you have a  
13 recollection of actually receiving this document?

14 A. Yes, I do. If not this specific document,  
15 one that was identical, except it may not have had  
16 the word "draft" on it.

17 Q. Now, do you know why the back of this  
18 document does not have one of your identifying  
19 markers?

20 A. I do not. It looks like there may have  
21 been something else stapled to it that was removed.

1 And if that were the case, like I said before, if  
2 there is a multiple page exhibit, the back page  
3 gets the actual label. Not every page.

4 Q. But in the ordinary course of events, it  
5 should have one of your labels; correct?

6 A. It should have. Now, that does--there  
7 could be some human error where one either didn't  
8 get on it or got removed somehow, but the normal  
9 course in the process was to take it in, label it,  
10 copy it, and secure it.

11 Q. Turning to the label that's on the back of  
12 the page of notes behind the first page of Tab 13.  
13 You will see that the date received there is it  
14 7/9/98.

15 Do you see that?

16 A. Yes, sir.

17 Q. Is it possible that that was human error  
18 as well?

19 A. I mean, it could have been.

20 Q. But you're certain that your firm received  
21 and processed this document when from your

1 investigator in California?

2 A. Oh, yes.

3 There is another explanation for this,  
4 too, because sometimes multiple copies of the same  
5 document would come through, and the first one is

6 going to get a label, and if the secondary one was  
7 set aside as a duplicate, we may not have labeled  
8 it if it was the identical document, but I don't  
9 know that to be true in this case.

10 Q. All right. Now, with respect to your  
11 second affidavit and the Vind documents, you  
12 relied, I believe you testified, on what the  
13 counsel for Methanex prepared for you as to what  
14 the Vind documents were?

15 A. Yes, sir.

16 Q. And you didn't check specifically the  
17 documents that you were given against the footnote  
18 in the motion that was filed by United States  
19 Government?

20 A. No, I did not.

21 Q. And when you declared in your sworn

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1 affidavit that the Vind documents were all obtained  
2 legally, you were referring to the documents that  
3 you understood to be the Vind documents, and is it  
4 true that you understood those documents to be the  
5 documents that you had obtained?

6 A. Yes.

7 Q. So, your declaration in your second  
8 declaration, the effect of it was that you were  
9 swearing that the documents that you had obtained  
10 were all obtained legally; is that correct?

11 A. Yes, sir.

12 Q. Now, Mr. Legum asked you a series of legal  
13 questions about what is legal in terms of retaining

14 discarded materials. Is this the type of thing you  
15 pay quite a bit of attention to?

16 A. Yes, sir.

17 Q. Why is that?

18 A. Because it's a normal investigative method  
19 that's used throughout the United States and  
20 elsewhere, and it's significant to know that if  
21 you're going to have something that's admissible,

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1 that you do--you conduct your investigative method  
2 properly, so that it can't become inadmissible.

3 Q. Do you generally keep up-to-date with  
4 developments in the law with respect to this issue?

5 A. Yes.

6 Q. Now, could you repeat again where the  
7 dumpster from which the Regent document--Regent  
8 International documents were recovered, where that  
9 was physically on the property?

10 A. Physically in the parking lot of the  
11 office building itself.

12 Q. And it was your understanding that the  
13 public had access to it?

14 A. Public had total access to the parking lot  
15 and to that dumpster. There is no chainlink fence  
16 around it. There was no security guard, there was  
17 no locksmith.

18 Q. So anyone could walk in off the street and  
19 pick it up?

20 A. Yes, sir.

21 Q. And is it your testimony that Mr. Dunne at

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1 one time diagramed where it was for you on the  
2 property?

3 A. He did, and it may have been through a  
4 photograph that may have been through a handwritten  
5 diagram, I can't recall right now. But the reason  
6 I know that is because we talked about the  
7 logistics of doing this without arousing any  
8 suspicion, and basically it was where it was  
9 situated was fine, but he had to wait until all of  
10 the trash had come out of the building.

11 Q. And is there any doubt in your mind that  
12 this dumpster was publicly accessible?

13 A. It was definitely publicly accessible.

14 MR. DUGAN: I have no further questions.

15 PRESIDENT VEEDER: Just one moment.

16 Do you have any questions/

17 Thank you very much. We come to the end  
18 of your testimony.

19 THE WITNESS: I'm excused?

20 PRESIDENT VEEDER: You're excused. We are  
21 going to have a short break and then we're going to

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1 have the second witness. How long do we need by  
2 way of a break? Will five minutes do?

3 MR. LEGUM: Ten would be better.

4 PRESIDENT VEEDER: Ten minutes is better  
5 than five minutes, so let's make it ten minutes.  
6 Thank you.

7 (Brief recess.)

8 CLAIRE MORISSET, CLAIMANT/INVESTOR'S WITNESS,  
9 CALLED

10 PRESIDENT VEEDER: Let's resume. We now  
11 have before us the second witness proffered by  
12 Methanex, Ms. Morisset.

13 THE WITNESS: Yes.

14 PRESIDENT VEEDER: Ms. Morisset, you have  
15 before you the wording of a declaration the  
16 Tribunal will invite you to make, and if you're  
17 willing to make it, we invite to you do so now.

18 THE WITNESS: Thank you. I solemnly  
19 declare upon my honor and conscience that I shall  
20 speak the truth, the whole truth, and nothing but  
21 the truth.

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1 PRESIDENT VEEDER: Thank you. Mr. Dugan.

2 DIRECT EXAMINATION

3 BY MR. DUGAN:

4 Q. Thank you. Good evening, Ms. Morisset.

5 A. Good evening.

6 Q. My name is Christopher Dugan and I'm an  
7 attorney for the Methanex Corporation with the law  
8 firm of Paul Hastings, and I'm here representing  
9 Methanex Corporation in this NAFTA arbitration  
10 against the United States of America.

11 Could you state your full name for the



12 record, please.

13 A. My name is Claire Noelle Morisset.

14 Q. And could you state your educational  
15 background.

16 A. I have an undergraduate degree in Public  
17 Law, and a graduate degree in public economic law  
18 from the University of Paris II Pantheon-Assas in  
19 Paris, France, and I'm currently enrolled in law  
20 school in an evening course at Catholic University.

21 Q. And what year are you in?

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1 A. I just finished my second year out of  
2 four.

3 Q. And where are you presently employed?

4 A. I'm currently employed at a law firm as a  
5 legal assistant.

6 Q. And what are your duties at the law firm?

7 A. My duties at the law firm are document  
8 management and handling. They are also following  
9 the billing for one of our clients. Research,  
10 legal research, drafting of legal memoranda, things  
11 like that.

12 Q. And how long have you been with the law  
13 firm that you're presently at?

14 A. Just shy of four years.

15 Q. Did there come a time when you learned  
16 that the law firm that you work at had been  
17 retained by Methanex Corporation?

18 A. I'm sorry, could you repeat that?

19 Q. Sure.

20 Did there come a time that you learned  
21 that the law firm that you now work at had been

682

1 retained by Methanex Corporation?

2 A. Yes, I did.

3 Q. Could you explain the circumstances of  
4 that, please.

5 A. I was told by one of the partners that a  
6 large number of documents would be coming in, and  
7 that we had been retained by Methanex to process  
8 them.

9 Q. What was your understanding of where the  
10 documents were coming from?

11 A. My understanding of where the documents  
12 were coming from was that they had been obtained  
13 from discarded documents in a public place.

14 Q. And who was shipping them to you?

15 A. An investigator by the name of Jim  
16 Stirwalt out in California.

17 Q. Do you recall when this was?

18 A. It was shortly after I became employed  
19 with the firm, so, late 2000--the fall of 2000.

20 Q. And do you recall how long the engagement  
21 of your firm with respect to this Methanex matter

683

1 lasted?

2 A. I recall being involved with it for about  
3 four months.

4 Q. Now, did you have any understanding of why  
5 Methanex retained the firm that you're with? What  
6 was the purpose of the retention?

7 A. I wasn't exactly aware of that purpose  
8 beyond the fact that I needed to process the  
9 documents that we obtained and filed them in a way  
10 that was understandable by subject matter,  
11 chronologically, and so on.

12 Q. And it was your understanding that these  
13 documents came from a private investigator; is that  
14 correct?

15 A. That's correct.

16 Q. Did you have an understanding of what he  
17 was investigating?

18 A. He was investigating the activities of a  
19 firm by the name of Regent International and the  
20 activities of its President or Director, Richard  
21 Vind, and his--essentially what we were looking at

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1 was how the ethanol industry was coming out against  
2 MTBE, which is a fuel additive and...

3 Q. What's the basis for that understanding  
4 that you have?

5 A. It's the result of conversations I had  
6 with the partners at the firm.

7 Q. And how many partners are there at the  
8 firm?

9 A. There are four.

10 Q. And so you talked with them about the  
11 scope of this particular retention and what the  
12 purpose of the investigation in California was?

13 A. I spoke to two of them with that purpose,  
14 yes.

15 Q. Are those the partners that you worked for  
16 on a daily basis?

17 A. Yes.

18 Q. Now, does the law firm that you work for  
19 ever engage in other investigations, or has it, to  
20 your knowledge?

21 A. It has, but not quite of the scope that

685

1 the Methanex investigation was.

2 Q. In the course of your work at the firm,  
3 has there ever arisen an issue as to whether  
4 documents being collected were being collected in  
5 compliance with the law?

6 A. Absolutely. When we first came into  
7 possession of the Regent International documents  
8 and once I learned that those documents had been  
9 discarded, I asked one of the partners, you know,  
10 well, is this legal? Is this okay, and he said  
11 yes, and he--I can't remember whether this was at  
12 the same time as that, but he showed me part of the  
13 California code that said that it was legal.

14 Q. Was this before you started law school?

15 A. Yes, it was.

16 Q. Was there ever any discussion at your firm

17 about the legality of this practice of collecting  
18 discarded documents?

19 A. Absolutely.

20 Q. Could you tell us what those discussions  
21 entailed.

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1 A. Well, those discussions were essentially  
2 relating to the question of obtaining discarded  
3 documents and whether the person who had thrown  
4 them out actually retained property over them and  
5 whether we had a duty to honor that. And when we  
6 looked at the California Code, we came to the  
7 conclusion that we did not, and that we could come  
8 into possession of those documents.

9 Q. Do you recall whether any other questions  
10 of the legality of the investigator's operations  
11 were ever discussed either in general or in  
12 specific?

13 A. Yes, because the documents were obtained  
14 from a public place, and we did not want the  
15 investigator to trespass onto any private property  
16 to obtain those documents.

17 Q. Do you know whether the investigator was  
18 instructed to adhere to that admonition?

19 A. Yes, he was, absolutely. We only retain  
20 licensed investigators, and they are given the  
21 express instruction to stay within legal means.

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1 Q. And how do you know that they're given the  
2 express instructions to stay within the legal  
3 means?

4 A. The partners told me so.

5 Q. Did the partners tell you that  
6 Mr. Stirwalt, the investigator who was retained to  
7 investigate Regent International, was instructed to  
8 stay within the law?

9 A. Absolutely.

10 Q. Do you have any recollection as to when  
11 you had that conversation with the partner who  
12 informed you that Mr. Stirwalt had been so  
13 instructed?

14 A. I had that conversation early on in my  
15 involvement in the document management, but I can't  
16 exactly pinpoint it. It was shortly after I  
17 started processing the documents that were coming  
18 in.

19 Q. You started processing the documents that  
20 were coming in, did you notice that they were  
21 discarded documents?

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1 A. Yes, they had coffee stains. They were  
2 torn, ketchup and gum.

3 Q. And so that raised a question in your mind  
4 as to the legality?

5 A. Yes.

6 Q. And you brought that question to the  
7 attention of the partners for whom you worked?

8 A. I did.

9 Q. Now, what's your understanding of where  
10 the Regent International documents were collected  
11 from?

12 A. Well, there was an address that was on the  
13 envelopes that were sent to us by the investigator,  
14 and if memory serves, it's something like 910 Birch  
15 Street, Brea, California, and those were on all of  
16 the manila envelopes containing the documents that  
17 we received.

18 Q. Do you have any understanding of where the  
19 documents that were discarded were physically  
20 located?

21 A. It's my understanding they were in a

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1 dumpster.

2 Q. Do you know--do you have any understanding  
3 of where the dumpster was?

4 A. It's my understanding that the dumpster  
5 was behind the building where the Regent  
6 International offices are located.

7 Q. Do you have an understanding of whether  
8 the dumpster was publicly accessible?

9 A. Well, it's my understanding that it was,  
10 because we gave the investigator the express  
11 instruction to get the documents legally, so I  
12 don't know this for sure, but I'm confident that he  
13 wouldn't have tried to obtain them had they been  
14 illegal.

15 Q. Do you have any reason to believe that he  
16 did not work in accordance with the law?

17 A. No, I do not.

18 Q. Do you have any reason to believe that he  
19 ever entered the premises of Regent International?

20 A. No.

21 Q. So, you've never heard anything from

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1 anyone in the office that Mr. Stirwalt in any way  
2 violated any of the instructions he was given by  
3 your firm to stay within the law?

4 A. No, not that I'm aware.

5 Q. Now, after Mr. Stirwalt recovered the  
6 documents, can you describe for us what happened to  
7 them.

8 A. He recovered the documents, and went to  
9 the offices--I mean, not inside the offices,  
10 outside the offices on a nearly daily basis, and he  
11 put the documents inside manila envelopes, which he  
12 dated. He dated the date of collection, the time  
13 of collection, the location of the collection, and  
14 he put them in a Federal Express package to send  
15 to us.

16 Q. And then after they arrived at your  
17 office, who took custody of them?

18 A. I did.

19 Q. And who did you do with the documents  
20 after you took custody of them?

21 A. I took the manila envelope outside of the



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1 Fed Ex envelope, and I kept the order of the  
2 documents as I received them and proceeded to make  
3 a first set of photocopies, which I then Bates  
4 stamped. And once I finished with the originals, I  
5 put the originals back into the manila envelope,  
6 and wrote on the envelope which Bates numbers the  
7 originals corresponded to.

8 Q. Now, then--

9 MR. LEGUM: Excuse me, Mr. President.  
10 Could I have an opportunity to take a look at what  
11 has been shown to the witness.

12 MR. DUGAN: You will. I just have to make  
13 it clear what I'm doing. The originals that are in  
14 the book of originals do not contain the Bates  
15 stamps. The documents that were actually filed by  
16 Methanex in this action do contain the Bates  
17 stamps.

18 And so, what I'm trying to do in a way  
19 that the-- would be accurately reflected in the  
20 record is make reference to the originals, make a  
21 corresponding reference to the document that's in

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1 the JS exhibits, and then ask Ms. Morisset if she  
2 can identify the documents that's in the exhibits  
3 as having the Bates number that she put upon the  
4 documents. That's easily said. It's going to be  
5 much more difficult to do that.

6           MR. LEGUM:  Would it be better, I just  
7 throw this out for your consideration to have the  
8 witness refer to the volumes that have actually  
9 been offered into evidence?

10           MR. DUGAN:  That's what I'm pointing her  
11 to, what I'm going to be showing her.

12           MR. LEGUM:  That is the JS volume?

13           MR. DUGAN:  Is that the JS volume?  That  
14 is the JS volume.

15           MR. LEGUM:  Thank you very much.  We have  
16 a copy.

17           PRESIDENT VEEDER:  If you could just give  
18 us the JS volume number, we'll get it out as well.

19           BY MR. DUGAN:

20       Q.  If I could ask you to turn first, if you  
21 put that book aside, and if you could look at the

693

1 other book in front of you, which was the book of  
2 originals, if you could turn to Tab 24--

3       A.  24.

4       Q.  -- which is Exhibit Number 217, which is  
5 11 JS tab 217.

6           All right.  Now, can you look, first of  
7 all, at the volume to your right.

8       A.  Yes.

9       Q.  And could you look at the front of that  
10 and just identify what volume that is that you're  
11 looking at?  Just close the volume in front of you.  
12 Close it.  There should be a label in front of-- one

13 more time. There you go.

14 Is that 11 joint supplement?

15 A. Joint Submission of Evidence Volume 11,

16 yes.

17 Q. Okay. Could you turn to Tab 202, please.

18 A. 202.

19 Q. I'm sorry, 217.

20 A. 217.

21 Q. Okay. Now, can you compare the Tab 217 in

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1 the volume on your left with Tab 24 in the volume  
2 on your right?

3 A. Outside Mark's studio photocopier, I don't  
4 notice any difference.

5 Q. Do you notice, is there a Bates number on  
6 the one on the left?

7 A. Yes, there is.

8 Q. Is there a Bates number on the one on the  
9 right?

10 A. No, there is not.

11 Q. And she's referring to the one on the left  
12 is the joint submission which includes the Bates  
13 number, the original, which is the one on the right  
14 does not have a Bates number; is that correct?

15 A. That's correct.

16 Q. Okay. Now, are these documents that you  
17 have kept in custody as part of your job?

18 A. Yes.

19 Q. All right. We are going to try to go  
20 through the same process with the remaining seven

21 or eight documents, okay? If you can turn to the

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1 book of originals, turn to page 25, Tab 25. That's  
2 Exhibit 218 in Methanex's summary of evidence, and  
3 it's 11 joint submission Tab 218. And I will ask  
4 you the same thing.

5 Does the version of the document in the  
6 joint submission on your right have a Bates number?

7 A. Yes, it does.

8 Q. And but for the Bates number, is it the  
9 same as the document on your left which is the book  
10 of originals?

11 A. Yes, it is.

12 Q. Okay. From that, do you conclude that the  
13 documents are the same but for the Bates number?

14 A. That's correct. I didn't stamp the  
15 originals. I only stamped the copies.

16 Q. Okay. And did you maintain possession of  
17 these--the original of this document as part of  
18 your duties?

19 A. Yes, I did.

20 Q. If we could turn to Tab 26. The  
21 corresponding exhibit number is 219. Is your

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1 answer the same for this document?

2 A. Yes.

3 Q. This document was kept in your possession,

4 the original was kept in your possession as part of  
5 your duties?

6 A. Yes, it was. It was in my office.

7 Q. Okay. And the copy that's in the record  
8 at 11 JS tab 219 is a copy of the original?

9 A. Yes, it is.

10 Q. Okay, thank you.

11 Turn next to Tab 27. That is--we are  
12 skipping ahead--Exhibit 222, 11 joint submission  
13 Tab 222. Again I will ask you the question.

14 Does the version of the document in the  
15 joint submission volume on your right have a Bates  
16 number?

17 A. Yes, it does.

18 Q. But for that, is it the same as the volume  
19 on your left, which is the book of originals?

20 A. Yes, it is.

21 Q. Do you conclude from that, that that is

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1 the same document except with the addition of a  
2 Bates number?

3 A. I do.

4 Q. Did you maintain possession and control of  
5 the original as part of your duties?

6 A. I did.

7 Q. Okay. Tab 28, please, which is Tab 223,  
8 11 joint submission 223.

9 Same question: Do you see a Bates number  
10 on the book in the--

11 A. I do.

12 Q. --joint submission.

13 And the original does not have a Bates  
14 number; is that correct?

15 A. That's correct.

16 Q. Okay. Do you conclude from that that the  
17 version with the Bates number is simply the same,  
18 it is a copy of the original, but with the Bates  
19 number added?

20 A. Yes.

21 Q. Did you maintain a copy--did you maintain

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1 the original of this as part of your job duties?

2 A. Yes, I did.

3 Q. Okay. Tab 29, which is Tab 26 in  
4 Methanex's summary of evidence, 11 joint submission  
5 Tab 226.

6 Looking at Tab 226, do you see a Bates  
7 number on that?

8 A. I do.

9 Q. But for the Bates number, is it identical  
10 to Tab 29 of the book of originals?

11 A. It is.

12 Q. Are the documents the same but for the  
13 Bates number?

14 A. Yes, one being the copy of the other.

15 Q. And did you maintain the original of the  
16 document as part of your ordinary course?

17 A. I did.

18 Q. Tab 30, and then if you could flip forward

19 to Tab 258 in the joint submission.

20 Again, is there a Bates number on Tab 258?

21 A. There is.

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1 Q. Is there a Bates number in Tab 30 in the  
2 book of originals?

3 A. There is none.

4 Q. But for that are the documents identical?

5 A. Yes, they are.

6 Q. Did you maintain the original in Tab 30  
7 as--in the course of your duties at the firm?

8 A. Yes, I did.

9 Q. Okay. Final document, Tab 31, if you  
10 could flip to Tab 259 of the joint submission.

11 Does 259 have a Bates number?

12 A. Yes, it does.

13 Q. But for that, I realize it's a very thick  
14 document, but for that, do they appear to be the  
15 same document?

16 A. They appear, yes.

17 Q. Okay. Do you know if the original of that  
18 telephone message book is kept, has been kept in  
19 your possession and custody at the--at your work?

20 A. Yes, it has.

21 Q. Thank you very much.

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1 Now, then, did there come a time when you

2 turned the originals of those documents that we've  
3 just been looking at over to counsel for Methanex?

4 A. Yes.

5 Q. And did you sign delivery receipts for  
6 those two, the documents you turned over?

7 A. I did.

8 Q. Okay. I would like to pass to you what  
9 have been marked or what I would like to mark as MX  
10 Numbers 6 and 7, if you could look at MX Number 6,  
11 is a document dated June 8th, '04.

12 (MX Exhibit No. 6 was marked  
13 for identification.)

14 Q. And it says originals received from and it  
15 has numbers 218, 219, 223, 259, 258, and 162.

16 And is that your signature?

17 A. Yes, it is.

18 Q. Thank you. And that again is MX Number 6.

19 And then I would like--what I would like

20 to mark as MX Number 7.

21 MR. LEGUM: Excuse me, Mr. President,

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1 could we wait until we have copies of these before  
2 he examines the witness on them?

3 MR. DUGAN: I'm sorry.

4 PRESIDENT VEEDER: Put the number on them,  
5 and then we will read it.

6 MR. LEGUM: And I'm sorry, Mr. Dugan,  
7 which one did you mark this as?

8 MR. DUGAN: Six. I'm going too fast.



9 It's a tendency when you have to do tedious  
10 document numbers. MX6 has the one with June 8, '04  
11 at the top.

12 MX7 is also June 8 but it doesn't have the  
13 number June 8 at the top.

14 PRESIDENT VEEDER: Mr. Dugan, we have  
15 difficulty understanding the numbering of the  
16 documents. Could you help us with X7, it refers to  
17 document number 42 and Bates stamp 4851. What does  
18 the number refer to? And the same for the other  
19 document.

20 MR. DUGAN: I believe that the MX6 refers  
21 to the exhibit numbers in--as originally used by

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1 Methanex and as incorporated in Mr. Vind's  
2 affidavit.

3 PRESIDENT VEEDER: Well, I was talking  
4 about X7.

5 MR. DUGAN: Right. X7, I believe that  
6 those--is a description of documents that I think  
7 correspond to the exhibits we are talking about. I  
8 just don't know which exhibit number it is. Let me  
9 see if I can solve that question.

10 PRESIDENT VEEDER: And the other query,  
11 Mr. Dugan, is on X6, have a reference to 162,  
12 which, as I recall, was withdrawn because there was  
13 not an original.

14 BY MR. DUGAN:

15 Q. All right. Ms. Morisset, if you could  
16 look at the volume to your right, which is the

17 joint submission.

18 A. Yes.

19 Q. Could you look at tabs 218, 219, 223.

20 Now, Ms. Morisset, when you referred in

21 MX6 to number 218--

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1 A. Yes.

2 Q. --is the document in front of you the 218  
3 you are referring to?

4 A. Yes.

5 Q. Could you turn to 219.

6 Is the document in front of you the  
7 document 219 you were referring to?

8 A. Yes, it is.

9 Q. Turn to 223.

10 Is the document in front of you the  
11 document you were referring to in MX6, number 223?

12 A. Yes, it is.

13 Q. Turn to 259, please. Is document 259 the  
14 same document that you were referring to in MX6?

15 A. Yes, it is.

16 Q. How about 258?

17 A. Yes, it is.

18 Q. Okay. Now, if you could turn to tab 226.

19 Do you see Tab 226?

20 A. I do.

21 Q. Okay. Now, if you turn to what we have

1 marked as MX7, and in what we've marked as MX7 you  
2 describe a document number 42 and Bates stamped  
3 4851.

4 A. Yes.

5 Q. Is that document 226?

6 A. Yes, it is.

7 Q. Okay. And so, document 226 is what you're  
8 referring to in the exhibit marked MX7?

9 A. Yes.

10 Q. Okay. Now, if you will look to document  
11 Tab 217.

12 Now, looking at document 217 in front of  
13 you in the joint submission--

14 A. Yes.

15 Q. --is that the same as the document you  
16 have described in MX7 as document number 271 and  
17 Bates stamped 1890?

18 A. Yes, it is.

19 Q. Now, finally, if I could ask you to turn  
20 to document 222.

21 A. Um-hmm.

1 Q. All right, if you could turn to document  
2 222 and look at document 162, please. Is that in  
3 that binder?

4 A. It's not in the same binder.

5 Q. I think that covers all--seven of the  
6 eight documents. There is confusion with respect

7 to 162 and 222, that perhaps my colleague can  
8 explain it.

9 PRESIDENT VEEDER: Is there a declaration  
10 on you, or do we prepare you as counsel?

11 MR. KOFF: As you wish.

12 When we were meeting downstairs in the  
13 breakout session, there was confusion regarding the  
14 documentation.

15 PRESIDENT VEEDER: I rather you didn't  
16 refer to what happened downstairs, so try and do it  
17 in the original form.

18 MR. KOFF: Not to reveal any of the  
19 substance, however on this particular issue, there  
20 was confusion regarding documentation 162 being  
21 transposed with document 222, if you may recall.

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1 That is the same situation here. On the notation  
2 that is received here by the witness, 162 was  
3 intended as 222; the substantive document  
4 underlying 222 was understood to be 162 here, if  
5 that makes sense.

6 MR. DUGAN: Let me ask you this. Maybe  
7 this is an easier way of doing it.

8 BY MR. DUGAN:

9 Q. Do you recall--what you have in front of  
10 you is document 222; correct?

11 A. Yes.

12 Q. Do you remember transferring that document  
13 to counsel for Methanex?

14 A. Yes, I remember doing that, and the reason

15 I remember is that the pages, the original pages  
16 aren't in the right order, and I didn't Bates stamp  
17 them in order. I Bates stamped them in the order I  
18 received them, and if you look at page five of this  
19 document, it's actually 1879 as opposed to 1880,  
20 and that's why I remember it being transferred.

21 Q. And you do remember transferring this to

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1 Methanex's counsel?

2 A. I do.

3 Q. Do you remember it as being part of the  
4 group of six documents, five of which we just went  
5 over?

6 A. Yes.

7 Q. Okay. So, just to summarize your  
8 testimony, Ms. Morisset, you're fully satisfied  
9 that the firm's investigators conducted themselves  
10 in accordance with the law?

11 A. Yes, I am.

12 Q. And you actually raised the question about  
13 whether they were conducting themselves in  
14 accordance with the law?

15 A. I did.

16 Q. And you were informed by the partners for  
17 whom you worked that they were, in fact, operating  
18 in accordance with the law?

19 A. That's right.

20 MR. DUGAN: Thank you very much. I have  
21 no further questions.

1 THE WITNESS: You're welcome.

2 PRESIDENT VEEDER: Thank you, Mr. Dugan.  
3 Let's break for two minutes. Mr. Legum, you are  
4 coming this side of the table?

5 MR. LEGUM: I will. Could we break for 10  
6 minutes? There is one discrepancy that I can't  
7 rectify between the document provided in the JS  
8 series and the document that's at tab 31, at least  
9 the copies that we have.

10 PRESIDENT VEEDER: Let's break for 10  
11 minutes but without putting any pressure on you at  
12 all, just for administrative purposes, we need to  
13 know roughly how long you need for  
14 cross-examination.

15 MR. LEGUM: I think it will be 20 minutes.

16 PRESIDENT VEEDER: Thank you very much.  
17 Let's break for 10 minutes. Ms. Morisset, as with  
18 other witnesses, we ask you not to discuss your  
19 evidence at all during the breaks. Please come  
20 back and you give further evidence in the face of  
21 the Tribunal. So, talk about anything else but not

1 your evidence in the next 10 minutes.

2 THE WITNESS: I will do that. Thank you.

3 PRESIDENT VEEDER: Thank you.

4 (Brief recess.)

5 PRESIDENT VEEDER: Let's resume.

6 Mr. Legum.

7 CROSS- EXAMINATION

8 BY MR. LEGUM

9 Q. Ms. Morisset, my name is Bart Legum. I'm  
10 the Chief of the NAFTA Arbitration Division of the  
11 Office of International Claims and Investment  
12 Disputes at the Department of State. I will be  
13 asking you a few questions about the testimony that  
14 you just gave.

15 A. Okay.

16 Q. What's the name of the firm that you work  
17 for?

18 MR. DUGAN: Objection. That's not  
19 relative (sic). It's not probative.

20 PRESIDENT VEEDER: Mr. Legum, we regard  
21 this as a perfectly proper question to ask the

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1 witness, but we will leave it to the witness  
2 whether she wants to answer that question.

3 THE WITNESS: I won't answer that.

4 BY MR. LEGUM

5 Q. How long had you been at this firm when  
6 you received the Methanex assignment?

7 A. Two or three months, maybe less.

8 Q. So, you started off there, and then you  
9 worked there for a couple of months, and then  
10 you've got the assignment; is that correct?

11 A. That's right. I did have previous  
12 experience as a legal assistant.

13 Q. And your practice, you testified, was you  
14 would receive these envelopes from Mr. Stirwalt?

15 A. Yes.

16 Q. That's how you pronounce it? Stirwalt/

17 A. Stirwalt.

18 Q. You would receive these packages from him,  
19 you would make a copy of what you received and then  
20 Bates stamp them.

21 A. That's correct.

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1 Q. If I could refer you to Tab 217 of the  
2 joint submission of evidence volume.

3 Do you have that in front of you?

4 A. I do.

5 Q. In the bottom right corner there is a  
6 number 1890.

7 Do you see that?

8 A. Yes.

9 Q. Is that one of the Bates stamp numbers  
10 that you're referring to?

11 A. Yes, it is.

12 Q. And if you can turn to Tab 2--I'm sorry,  
13 218, at the bottom right-hand corner there is a  
14 number there as well, 9102.

15 Do you see that?

16 A. I do.

17 Q. Now, did you number the documents  
18 sequentially as you received them?

19 A. I did.



20 Q. Is it correct, then, that the document  
21 that is at Tab 218 was received later in time than

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1 the document that appears at Tab 217?

2 A. That's right.

3 Q. Now, I note that you only have four digits  
4 in your stamp there; is that correct?

5 A. There are more digits. Other documents go  
6 higher.

7 Q. So, there are documents that are beyond  
8 the 10,000 document number that have higher  
9 numbers; am I understanding you correctly?

10 A. That's right.

11 Q. But you didn't start over numbering after  
12 you reached 10,000 with one.

13 A. I did not.

14 Q. Good.

15 Did you ever speak with Mr. Stirwalt?

16 A. I did not.

17 Q. The conversations that you referred to  
18 concerning what Mr. Stirwalt were doing--was doing,  
19 those were all with other persons at the law firm;  
20 is that correct?

21 A. That's right.

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1 Q. Now, when did the conversation about the  
2 legality of what Mr. Stirwalt doing take place?

3 Was it shortly after you started your assignment,  
4 or was it a few weeks into the assignment, or  
5 months?

6 A. It was shortly after I started the  
7 assignment because I noticed very early on that  
8 they were discarded documents, as I said before,  
9 you know, I saw coffee stains and all sorts of  
10 different stains on these papers, and some were  
11 torn, which led me to question one of the partners  
12 as to, well, where are we getting this from, and is  
13 this okay, and he said yes. And later on he showed  
14 me an excerpt from the California Code, saying that  
15 it was legal.

16 Q. Is it your understanding that he did  
17 research on that subject after you raised it with  
18 him?

19 A. I don't believe that he did the research.  
20 I believe the excerpt from the California Code came  
21 from the investigator.

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1 Q. And that, to your understanding, was  
2 provided after you raised the issue; is that  
3 correct?

4 A. Yes, but I don't think that the reason the  
5 document was provided was because I raised the  
6 issue. I think this was something that was being  
7 discussed within the firm.

8 Q. So, at the time that you raised the issue,  
9 there were ongoing discussions at the firm about  
10 the legality of what the investigator was doing; is

11 that correct?

12 A. That's right.

13 Q. And how many conversations did you have  
14 concerning the legality of what Mr. Stirwalt was  
15 doing?

16 A. Three at the most.

17 Q. And how long were these conversations?

18 A. Rather short. The first one was, as I  
19 described, you know, is this all right, is this  
20 legal, and the response I got was, yes. And then  
21 when the fax with the information regarding the

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1 California Code came in, again one of the attorneys  
2 came to me and said, oh, by the way, you were  
3 asking me about this, well, here is the code, it's  
4 okay.

5 Q. Could you turn to your declaration. I  
6 don't have an extra copy, but perhaps you do,  
7 Mr. Dugan.

8 Do you have in front of you a declaration  
9 by yourself dated June 9, 2004?

10 A. I do.

11 Q. Is that your declaration?

12 A. It is.

13 Q. And that's a declaration under penalty of  
14 perjury; is that correct?

15 A. That's right.

16 Q. Now, you state that you began working with  
17 the law firm in September 2000; that's correct?

18 A. That's correct, yes.

19 Q. So, you began working on this assignment  
20 two to three months, you thought, after you started  
21 working at the firm?

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1 A. Yes. I'm not clear as to the time frame.  
2 It could have been one month or three months.

3 Q. So, approximately between October  
4 and--October 2000 and January of 2001 is when you  
5 started at the firm; is that correct?

6 A. Yes.

7 Q. So, this conversation about what the  
8 legality of what Mr. Stirwalt was doing took place  
9 around October of 2000 or November of 2000,  
10 something along those lines?

11 A. It was in the fall of 2000, yes.

12 Q. And at the time the firm was having  
13 ongoing discussions concerning the legality of what  
14 Mr. Stirwalt was doing; is that correct?

15 A. That's right.

16 Q. Now, if you turn to the second page of  
17 your declaration, the bottom paragraph, you state  
18 during the period August 2000 to February 2001, the  
19 firm received 88 packages of documents.

20 Do you see that?

21 A. Yes, I see that.

717

1 Q. So, Mr. Stirwalt had started his  
2 assignment in August of 2000; is that correct?

3 A. That's right.

4 Q. And the discussions concerning the  
5 legality of what he was doing took place in the  
6 firm, to your understanding, in October of 2000 or  
7 September of 2000.

8 A. Yes.

9 Other discussions about this may have  
10 taken place between the partners, but I was not  
11 made party to them, so I don't know.

12 Q. And you didn't join the firm until  
13 September of 2000, so you wouldn't know about  
14 discussions before then anyway?

15 A. That's right.

16 Q. Do you know what Mr. Stirwalt was told in  
17 August of 2000 as to how to conduct this  
18 assignment?

19 A. I don't know what the precise wording was,  
20 but the partners at the firm told me that they had  
21 told him to operate within legal means only.

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1 Q. They told you they told him that he should  
2 operate legally?

3 A. That's right.

4 Q. Do you know whether they gave him any more  
5 specific direction?

6 A. No.

7 Q. Is it your understanding that they relied  
8 on his good judgment to operate within the bounds

9 of the law?

10 A. Yes.

11 And also they relied on the fact that he  
12 was a licensed investigator in the State of  
13 California.

14 Q. You mentioned looking at the California  
15 Code. Are any of the partners at the firm members  
16 of the California bar, to your understanding?

17 A. I'm not sure of that. I don't think so.

18 Q. Do you have an understanding as to why  
19 Mr. Stirwalt terminated his investigation?

20 A. He terminated his investigation because we  
21 requested that he do so. The offices of Regent

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1 International had moved, and the discarded  
2 documents were no longer in a spot accessible to  
3 the public.

4 Q. Do you have an understanding as to where  
5 they were?

6 A. Yes. They were behind a wooded fence with  
7 a "No Trespassing" sign.

8 Q. At the new location?

9 A. At the new location, yes.

10 Q. If you could turn back to Tab 217.

11 A. Yes.

12 Q. That's an October 27, 1997, document; is  
13 that correct?

14 A. Yes, it is.

15 Q. The number that is on that document, 1899,

16 suggests that that was received relatively early on  
17 in the assignment.

18 A. That's 1890, but yes.

19 Q. I'm sorry. 1899--1890, excuse me.

20 Were there many documents from two or  
21 three years ago that were being thrown away in this

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1 batch of materials that you received?

2 A. Yes. Many documents of 2000.

3 Q. I beg your pardon?

4 A. Many documents of 2000, of the year 2000.

5 Q. Yes, but my question is: Were there many  
6 documents in the documents you received in 2000  
7 that dated from several years before?

8 A. Yes, but not quite as many as the more  
9 recent ones we received.

10 Q. Aside from your conversations with  
11 partners in the firm about their conversations with  
12 Mr. Stirwalt, is there any other basis for your  
13 knowledge as to Mr. Stirwalt's methods of  
14 investigation?

15 A. Not about Mr. Stirwalt's methods of  
16 investigation, but our firm is adamant about  
17 respecting the law. And to the extent feasible, we  
18 will make sure that the people we work with respect  
19 it, as well.

20 Q. Did anyone from the firm go out to  
21 California and work with Mr. Stirwalt in his

1 investigations?

2 A. I don't know.

3 Q. So, as far as you know, there was no one  
4 at your firm that had personal knowledge of what  
5 Mr. Stirwalt was doing from actually seeing what he  
6 was doing; is that correct?

7 A. Not that I'm aware, that's right.

8 MR. LEGUM: I have no further questions.

9 PRESIDENT VEEDER: Thank you.

10 Are there any questions in redirect?

11 MR. DUGAN: No redirect.

12 PRESIDENT VEEDER: There are some  
13 questions from the Tribunal. Please stand by.

14 QUESTIONS FROM THE TRIBUNAL

15 ARBITRATOR REISMAN: Ms. Morisset, I  
16 wonder if you could refer to document number 258 in  
17 that book.

18 THE WITNESS: Yes.

19 ARBITRATOR REISMAN: This is one of the  
20 documents that you received?

21 THE WITNESS: That's correct.

1 ARBITRATOR REISMAN: You had said that  
2 when you received the documents they had, I think  
3 the words were, tell-tale signs of being in trash,  
4 coffee stains, chewing gum and so on. Did this  
5 document have that?

6 THE WITNESS: No, this was actually one of



7 the cleaner ones.

8 ARBITRATOR REISMAN: Thank you very much.

9 THE WITNESS: You're welcome.

10 PRESIDENT VEEDER: Could we pursue that.  
11 Could you dig out from the relevant file in front  
12 of you what you call the original document. It's  
13 either 1030 or Tab 258. If you could just look at  
14 this.

15 THE WITNESS: Yes.

16 PRESIDENT VEEDER: It's not folded or  
17 creased at all, is it?

18 THE WITNESS: It is slightly on the front  
19 page, slightly--right here, and this is the state  
20 in which I received them, with slightly, you know,  
21 bent corners.

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1 PRESIDENT VEEDER: Was this stapled, do  
2 you recall, or it was loose in the form that you  
3 have it now?

4 THE WITNESS: I don't recall that.

5 PRESIDENT VEEDER: Could we have a quick  
6 look at it, if you could hand it over the table.

7 (Pause.)

8 PRESIDENT VEEDER: I would hand it back to  
9 you. I would like you to look at the top left-hand  
10 corner.

11 THE WITNESS: Yes.

12 PRESIDENT VEEDER: Do you see there are  
13 hole marks.

14 THE WITNESS: Yes.

15 PRESIDENT VEEDER: To us they look  
16 consistent with the staple.

17 THE WITNESS: Yes.

18 PRESIDENT VEEDER: Do you recall if there  
19 was a staple and you removed it, or it came in this  
20 present form?

21 THE WITNESS: Well, the way I processed

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1 the documents was in a way to make sure they stayed  
2 as--that I respected their integrity as much as  
3 possible. So, I was hired as a legal assistant  
4 because I'm very detail-oriented, and one of the  
5 things that I did do is to make sure that if I had  
6 an original, that was stapled, I would actually go  
7 back with the staple, look at where the holes were,  
8 and staple it again.

9 So, either this came to me stapled and I  
10 removed the staple and I forgot to restaple it,  
11 which I think is unlikely, or it came to me in this  
12 fashion, and I just left it that way.

13 PRESIDENT VEEDER: And one final question.  
14 You mentioned Mr. Jim Stirwalt, the private  
15 investigator. Do you know where he is today?

16 THE WITNESS: He's in California.

17 PRESIDENT VEEDER: Thank you.

18 THE WITNESS: You're welcome.

19 PRESIDENT VEEDER: Are there questions any  
20 from the parties arising from questions raised by  
21 the Tribunal? Mr. Legum?

1 MR. LEGUM: No, Mr. President.

2 PRESIDENT VEEDER: Mr. Dugan?

3 MR. DUGAN: No, no questions.

4 PRESIDENT VEEDER: Thank you very much for  
5 coming. We have come to the end of your testimony.

6 THE WITNESS: You're welcome. Thank you.

7 (Witness steps down.)

8 PRESIDENT VEEDER: What I would like to do  
9 now is, for ease of reference, to repeat the order  
10 of the Tribunal that was made at 2:45 this  
11 afternoon at the last of several in camera sessions  
12 held over the last three days, and this was the  
13 order of the Tribunal:

14 In regard to the USA's motion to exclude  
15 the remaining Regent International documents, the  
16 Tribunal is being requested by Methanex to impose  
17 an embargo on certain documentary and evidentiary  
18 materials prior to Mr. Vind's testimony tomorrow on  
19 the 10th of June 2004, which request has been  
20 opposed by the United States of America.

21 The Tribunal considers that it has the

1 power to impose the embargo, but in the exercise of  
2 its discretion and except in two respects as  
3 explained below, it declines to impose the embargo.  
4 The reasons for this order will be given at a later

5 date.

6 First, before Mr. Vind's testimony  
7 tomorrow, nothing shall be revealed by the USA to  
8 Mr. Vind of any discussions taking place in these  
9 sessions held in camera over the last three days.

10 Second, whilst both Methanex and the USA  
11 shall be entitled to the adduce into evidence this  
12 afternoon the new exhibits X1 to X4, if any such  
13 exhibit is not adduced in evidence this afternoon  
14 with the two Methanex witnesses, it will not be  
15 revealed by the USA prior to Mr. Vind's testimony  
16 tomorrow to Mr. Vind.

17 Mr. Vind can be shown the new bundle  
18 marked X5, the bundle we were shown this morning,  
19 before he commences his testimony tomorrow, except  
20 for the new documents in Tab 24 and Tab 31, which  
21 the United States agreed not to show or discuss

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1 with him prior to his testimony.

2 In addition, Mr. Vind, if he requested,  
3 can be shown the so-called originals of the  
4 relevant Regent International documents before he  
5 commences his evidence tomorrow.

6 It also follows that the two Methanex  
7 witnesses who will give evidence this afternoon  
8 will testify in public, subject to the Tribunal's  
9 existing order of the 28th of May 2004 on  
10 sequestration, which will mean that Mr. Vind will  
11 be excluded from the hearing room during their

12 testimony.

13           This order was effective immediately and  
14 remains effective subject to any further order by  
15 the Tribunal.

16           It's late in the day, and we don't propose  
17 that it would be useful now to proceed to hear oral  
18 submissions on the USA's motion. We nonetheless  
19 would like to address this motion and decide it  
20 before Mr. Vind's testimony tomorrow, and we invite  
21 comments from both sides as to the timetable for

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1 tomorrow morning.

2           Mr. Dugan, over to you, first.

3           MR. DUGAN: We are perfectly willing to  
4 address it tomorrow morning, if that's the  
5 Tribunal's wish. I can't remember the order of  
6 testimony. I believe it's Mr. Miller and then  
7 Mr. Listenberger and then Mr. Weinstein and then  
8 Mr. Vind. And Mr. Listenberger and Mr. Weinstein,  
9 we may have to interrupt Mr. Listenberger to do  
10 Mr. Weinstein because of the teleconferencing issue  
11 that we're all aware of, so we could either do it  
12 after the conclusion of the Listenberger  
13 cross-examination before Mr. Vind begins his  
14 testimony, whatever time that turns out to be. It  
15 could be early afternoon.

16           PRESIDENT VEEDER: Again, we are not  
17 holding you to any particular timetable, but do you  
18 have any view as to how long you need orally to  
19 supplement your submissions on the motions so far?

20 MR. DUGAN: 10 minutes at most.

21 PRESIDENT VEEDER: Oh, I see. And how

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1 about the United States?

2 MR. LEGUM: Just one point of  
3 clarification about the order of witnesses. Our  
4 understanding was that Methanex wanted to call  
5 Mr. Miller in the afternoon, and we have him  
6 standing by to receive a telephone call in the  
7 afternoon rather than the morning. Our  
8 understanding is that Mr. Listenberger is first.

9 There is an issue with what Mr. Dugan just  
10 proposed, and that is that--we have no objection to  
11 making the argument between Listenberger and Vind  
12 on the proviso that Methanex does not use in  
13 cross-examination of Mr. Listenberger any of the  
14 documents that are under discussion.

15 PRESIDENT VEEDER: I can tell you the  
16 Tribunal's preference is to address this first and  
17 maybe start earlier than 9:30 tomorrow. I don't  
18 know how long the United States will need to add to  
19 its oral submissions, but again just for  
20 administrative purposes, tell us your best estimate  
21 tonight.

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1 MR. LEGUM: The consensus here seems to be  
2 20 minutes.

3           PRESIDENT VEEDER: Subject to further  
4 comment from the parties, what we suggest is we  
5 start at 9:00 tomorrow and start with the motion.

6           MR. DUGAN: We could start at nine, if the  
7 Tribunal wants. I don't think we're going to take  
8 all day with our witnesses. So, if we start at  
9 9:30, I don't think that there is a material chance  
10 we will finish by 5:30.

11           PRESIDENT VEEDER: We will discuss and  
12 decide upon the motion, so we will need time, as  
13 well. I think it's safer to start with it and to  
14 make sure there are no accidents.

15           But does that cause you any difficulty?

16           MR. DUGAN: No, that's fine.

17           PRESIDENT VEEDER: Why don't we start at  
18 9:00 tomorrow, if that's okay with everybody, and  
19 it is. So, we will start at 9:00 and start with  
20 USA's motion. Whether it's half an hour or a bit  
21 longer doesn't really matter.

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1           Now, is there difficulty about the  
2 telephone call with Mr. Miller?

3           MR. DUGAN: I probably misspoke. It  
4 probably is scheduled for the afternoon, but if  
5 there is a problem, we will get in touch with them.

6           PRESIDENT VEEDER: Do sort it out amongst  
7 yourselves. We're happy if you're happy, but  
8 obviously the witness needs to be there.

9           And as regards other documents that will

10 be put to him over the telephone which he needs to  
11 have in front of him, are they being faxed out?  
12 What are the arrangements in regard to that?

13 MR. DUGAN: We will make arrangements with  
14 respect to that.

15 PRESIDENT VEEDER: Okay. Unless anything  
16 else has to be raised tonight, let's close today.  
17 Anything on the United States' s side?

18 MR. LEGUM: No, Mr. President.

19 PRESIDENT VEEDER: Mr. Dugan?

20 MR. DUGAN: Yes, there is one other thing.  
21 We have not had a chance to correct the

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1 transcripts yet, to give our corrections. It's our  
2 understanding that they have already been posted on  
3 the State Department Web site, even though they're  
4 not corrected. We would move that they be taken  
5 down from Web site until the corrected version is  
6 available.

7 PRESIDENT VEEDER: I think we were going  
8 to discuss with the parties how we should correct  
9 the transcript, both what kind of corrections and  
10 also a certain time scale, but I suspect this is  
11 not something you want to do overnight each day,  
12 Mr. Dugan; is that right?

13 THE WITNESS: That's correct.

14 PRESIDENT VEEDER: But obviously it's very  
15 important for us eventually that we do have a  
16 corrected transcript.

17 MR. DUGAN: Correct, and I understand



18 that, and it should be posted as soon as it's  
19 corrected, but I don't think it's appropriate to  
20 post an uncorrected transcript.

21 PRESIDENT VEEDER: Mr. Legum.

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1 MR. LEGUM It's the U. S. Government's  
2 practice to publish transcripts to the Web site as  
3 soon as they're available, and we indicate in the  
4 title of the link so anyone who clicks on that  
5 particular link that it is uncorrected, so no one  
6 will be operating under the assumption, mistaken  
7 assumption, that it is a final transcript.

8 PRESIDENT VEEDER: So it says something  
9 like "uncorrected, subject to correction"?

10 MR. LEGUM We could certainly add  
11 "subject to correction." Currently it says  
12 "uncorrected."

13 PRESIDENT VEEDER: Mr. Dugan, the Tribunal  
14 thinks that this can be met by what Mr. Legum said.  
15 It's uncorrected transcript, subject to correction,  
16 and I think anybody reading that would understand  
17 that this is a transcript which may be modified in  
18 the future. Indeed, if people have been listening  
19 to this, they may also think there are certain  
20 things that need to be corrected in the transcript.  
21 So, we think the present position is protective of

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1 both parties.

2 But have a look at their Web site, and if  
3 you have any further comments about it when it's  
4 modified, please come back to us. But we do need  
5 to address this again because we need to fairly  
6 tight timetable to make sure that we have all the  
7 relevant corrections fairly soon after the  
8 conclusion of this main hearing.

9 MR. DUGAN: We agree.

10 PRESIDENT VEEDER: Anything else? Well,  
11 let's close the proceedings, and we will see you  
12 all at 9:00 tomorrow morning. Thank you very much.

13 (Whereupon, at 6:41 p.m., the hearing was  
14 adjourned until 9:00 a.m. the following day.)

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1 CERTIFICATE OF REPORTER

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3 I, David A. Kasdan, RDR-CRR, Court  
4 Reporter, do hereby testify that the foregoing  
5 proceedings were stenographically recorded by me  
6 and thereafter reduced to typewritten form by  
7 computer-assisted transcription under my direction

8 and supervision; and that the foregoing transcript  
9 is a true record and accurate record of the  
10 proceedings.

11 I further certify that I am neither  
12 counsel for, related to, nor employed by any of the  
13 parties to this action in this proceeding, nor  
14 financially or otherwise interested in the outcome  
15 of this litigation.

16

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DAVID A. KASDAN, RDR-CRR

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