

March 21, 2003

By E-Mail & Overnight Service

V.V. Veeder, QC
Essex Court Chambers
24 Lincoln's Inn Fields
London WC2A 3ED
England

J. William Rowley, QC
McMillan Binch
Royal Bank Plaza
Suite 3800, South Tower
Toronto, Ontario M5J 2J7
Canada

Professor W. Michael Reisman
Yale Law School
P.O. Box 208215
New Haven, CT 06520-8215

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

Gentlemen:

On behalf of respondent United States of America, we respectfully enclose a copy of the Supplemental Statement of Defense on Intent of the United States. Pursuant to the Tribunal's order of February 12, 2003, we also respectfully provide our views on the nature and timing of the next phase of these proceedings.

As demonstrated in the enclosed fresh pleading, these proceedings may quickly and efficiently be brought to a close by an early hearing on the dispositive issue of intent. A hearing limited to intent would be appropriate for two reasons.

First, such a hearing would be the most efficient way to proceed. The bulk of the evidentiary materials presented by Methanex concern either the scientific support for a ban of MTBE or the relative benefits and detriments of ethanol as compared to MTBE. Because methanol and MTBE are not the same thing, none of these materials shed light

on the jurisdictional issue framed by the First Partial Award: whether California intended the measures at issue to address *suppliers* to MTBE producers such as Methanex. In sharp contrast to the technical issues raised by the scientific evidence presented by Methanex, the narrow issue of intent may readily and rapidly be briefed and submitted to the Tribunal for decision. It is indeed a “threshold” and “determinative issue[] on which limited testimony [c]ould be adduced at an early oral hearing,” as the Tribunal anticipated in paragraph 168 of the First Partial Award.

Second, it would be unfair to require the United States to proceed to a hearing on all merits issues when Methanex has not even established that its claims are within the NAFTA’s investment chapter – despite no less than *four* rounds of pleadings over the past three years, none of which has established the Tribunal’s jurisdiction. As a matter of principle, the Tribunal’s jurisdiction should be established before any full hearing on the merits is held.

The United States therefore proposes that the Tribunal adopt the following timetable:

| | |
|-----------------|---|
| May 1, 2003 | The United States shall submit its evidence-in-chief on the issues identified in the Supplemental Statement of Defense on Intent. |
| May 15, 2003 | Any submissions by Canada or Mexico pursuant to Article 1128, or submissions by <i>amici curiae</i> , shall be made. |
| June 16, 2003 | Methanex shall submit a Reply and any additional documents and witness statements permitted for a Reply by the parties’ agreement on procedure of August 14, 2000. The Reply shall identify with specificity those evidentiary materials previously introduced by Methanex on which it intends to rely with respect to the issue of intent. The Reply shall also identify any witness whose statement the United States has introduced whom Methanex wishes to call for cross-examination at the hearing. |
| August 1, 2003 | The United States shall submit a Rejoinder and any additional documents and witness statements permitted for a Rejoinder by the parties’ agreement on procedure of August 14, 2000. The Rejoinder shall identify any witness whose statement Methanex has introduced whom the United States wishes to call for cross-examination at the hearing. |
| August 15, 2003 | The Tribunal may advise the parties whether there are any witnesses not called by the parties whom the Tribunal wishes to call. |
| September 2003 | A oral hearing for the taking of testimony and oral argument on the issue of intent (estimated to require no more than three days). |

We look forward to discussing this proposal, as well as proposals for conducting the hearing, with the Tribunal at the March 31 procedural hearing.

Respectfully submitted,

Mark A. Clodfelter
Assistant Legal Adviser
Office of International Claims
and Investment Disputes

Enclosure
Copies with enclosure:
Christopher F. Dugan, Esq.
Alexander W. Koff, Esq.
Ms. Margrete Stevens