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16th March 2004: First Letter

Dear Colleagues,

*Re. NAFTA Arbitration
Methanex Corporation v. United States of America*

The Tribunal has considered Mr Dugan's letter dated 8th March 2004, enclosing the "proposed order" to be made by the Tribunal. This draft order has clarified one point in that it had appeared from Mr Dugan's letter of 28th January 2004 (at p. 7) that Methanex was seeking an order for "additional evidence from the United States". This is now clearly not the case; but it is appropriate to raise three further matters:

(1) Methanex's position, as understood by the Tribunal, has been that an order from the Tribunal is not necessary to any application made by Methanex to a court of competent jurisdiction under 28 USC §1782 directed at third persons (e.g. see transcript for 31.03.2003, pp. 108-109). In these circumstances, it remains unclear to the Tribunal why it is necessary for the Tribunal to make any order in the form sought by Methanex. Whilst the Tribunal does not encourage (nor discourage) an application under 28 USC §1782, it remains open to Methanex to make any application as, when and where it sees fit, as indicated by the Tribunal (inter alia) in its letter of 17th January 2003 to the Disputing Parties.

(2) Insofar as Methanex is seeking an order from the Tribunal pursuant to Articles 3.8 and 4.10 of the IBA Rules of Evidence, it remains unclear to the Tribunal that Methanex has yet satisfied all the conditions necessary for the application of these provisions. In particular, Methanex did not at the procedural meeting of 31st March 2003 establish that it could not obtain relevant documentation on its own and/or that relevant witnesses would not appear voluntarily before the Tribunal. The position appears not to be materially different today. Indeed, the Tribunal notes that (i) it was informed by Mr Legum's letter dated 22nd September 2003 that Methanex has obtained several thousands of pages of documentation pursuant to the California Public Records Act since March 2003, and (ii) with its Amended Statement of Defense dated 5th December 2003 the USA has adduced witness statements from certain of the relevant factual witnesses identified by Methanex in March 2003. From

their witness statements, these witnesses appear to speak directly to the events of 4th August 1998 on which (inter alia) Methanex has relied; and, given that these witnesses are to be called by the USA at the hearing next June (if requested by Methanex or the Tribunal), it will of course be possible for Methanex to cross-examine them on their written testimony.

(3) The Tribunal does not here rule out granting an application under Articles 3.8 and/or 4.10 of the IBA Rules at or even after the June hearing. By then, it may transpire that there are indeed relevant and material gaps in the evidence before the Tribunal, in particular, for example, if certain of the USA's named witnesses relating to the events of 4th August 1998 were to decline voluntarily to attend the June hearing for cross-examination. At this stage, however, this is mere supposition; and it cannot now provide the basis of a decision by the Tribunal in the form currently requested by Methanex.

Yours Sincerely,



V. V. Veeder

cc. Mr William Rowley QC: by fax: 00 1 416 865 7048; Professor Michael Reisman: by fax: 00 1 203 432 7247.

cc. Ms Margrete Stevens, ICSID: by fax: 00 1 202 522 2615.

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16th March 2004: Second Letter

Dear Colleagues,

*Re. NAFTA Arbitration
Methanex Corporation v. United States of America*

The Tribunal has considered Mr Dugan's letter dated 8th March 2004, setting out the procedural grounds on which Methanex has advanced its Request of 28th January 2004 for the Tribunal's Reconsideration of Chapters J and K of its First Partial Award.

The Tribunal invites the USA to respond in writing to these procedural grounds, as invoked by Methanex (but not including the merits Methanex's Request), to be received by the Tribunal no later than 30th March 2004; and in the event that such written submissions are received, the Tribunal invites Methanex to respond in writing, to be received by the Tribunal no later than 14th April 2004.

Yours Sincerely,



V. V. Veeder

cc. Mr William Rowley QC: by fax: 00 1 416 865 7048; Professor Michael Reisman: by fax: 00 1 203 432 7247.

cc. Ms Margrete Stevens, ICSID: by fax: 00 1 202 522 2615.