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10<sup>th</sup> October 2003

Dear Colleagues,

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

First, the Tribunal has considered the letters dated 27<sup>th</sup> August and 4<sup>th</sup> September 2003 from the USA and the letter dated 3<sup>rd</sup> September 2003 from Methanex, relating to the USA's application to the Tribunal for an order that Methanex produce to the USA (a) copies of all materials, documents, data or other information on which Methanex's scientific experts relied for the opinions and conclusions they expressed in the Expert Reports served by Methanex in November 2002 and January 2003, with an indication of which copies relate to which report; and (b) in addition, with respect to Methanex's Expert Witness Dr Rausser, the underlying programming used to produce Table 1 of his Expert Report and a roster of the key assumptions embedded in that programming.

The Tribunal makes the following order:

- (1) As previously ordered by the Tribunal, each Disputing Party's Expert Reports are required to comply with Article 5 of the IBA Rules; and in particular each Expert Report is required, by Article 5(2)(b) & (c) of the IBA Rules, to contain a statement of the facts on which that Expert Report is based and a description of the evidence and information used in arriving at that Expert Report's conclusions:
- (2) As also previously ordered by the Tribunal and in accordance with the time-table already established by the Tribunal, each Disputing Party is required by Article 3(1) of the IBA Rules to submit to the Tribunal and the other parties, all documents available to that party on which that party relies, including public documents and those in the public domain (except for any documents that have already been submitted by another party);

(3) Whilst the Tribunal accepts the reluctance of Methanex at this stage of the proceedings not to burden the Tribunal unnecessarily “with voluminous and often highly technical scientific papers and reports on which [Methanex's] expert reports rely...” (Methanex’s Summary of Evidence, ¶2), that consideration does not apply to the USA currently studying Methanex's Expert Reports;

(4) Accordingly, as regards the USA, Methanex’s Expert Reports must comply fully with the requirements of the IBA Rules and the Tribunal’s orders; exactly the same position shall apply to the Expert Reports served by the USA, as regards Methanex; and the Tribunal asks both Disputing Parties to note that in the event of any failure to comply with those requirements, the Tribunal may exercise its power to exclude or limit expert evidence sought to be adduced by the Disputing Party in default;

(5) At this stage of these proceedings, the Tribunal is unable to confirm whether or not Methanex's Expert Reports comply fully with the requirements of the IBA Rules and the Tribunal's previous orders. For the reasons stated above, the Tribunal expects Methanex's full compliance; and where it has not so complied, the Tribunal expects notification of prompt compliance;

(6) In particular, if (as explained in Methanex’s Letter dated 3<sup>rd</sup> September 2003) all the materials referenced in Methanex’s Expert Reports consist either of public information available to the USA or of documentation which has already been provided by Methanex to the USA, with the exception of “the survey that was conducted of nine California Regional Water Quality Control Boards in March of 2001; see Methanex's Summary of Evidence Submitted January 31, 2003, Tab F (Fn 65 of Dr Gordon Rausser's Report).”, the Tribunal requires Methanex to undertake the following steps promptly:

(A) As regards the “public information”, the identification of this information should be provided by Methanex to the USA and its designated experts, as requested by the USA; and

(B) As regards the “survey”, access to this documentation should be provided to the USA and its designated expert witnesses, as requested by the USA;

(7) As regards Table 1 to Dr Gordon Rausser's Expert Report, the Tribunal makes no specific order at this stage of the proceedings; but the Tribunal asks the Disputing Parties to note that the Tribunal is at present minded to request Dr Rausser and his counterpart Expert Witness appointed by the USA to “meet and confer” (inter alia) on issues arising from that Table 1 pursuant to Article 5(3) of the IBA Rules, after the USA submits an Expert Report from that Expert Witness:

Second, the Tribunal acknowledges safe receipt of the USA's email dated 8<sup>th</sup> October 2003 regarding "amicus procedures" which are currently the subject of the Tribunal's procedural deliberations. It does appear that the documentation emanating from the NAFTA Free Trade Commission on 7<sup>th</sup> October 2003 may affect the issues before the Tribunal regarding these "amicus procedures". The Tribunal will therefore extend to the Disputing Parties an opportunity to comment in writing on the effect of such documentation for these arbitration proceedings; and it would welcome these comments as soon as possible after the official versions become available from the USA (as promised in the USA's email), but no later than *31<sup>st</sup> October 2003*.

Yours Sincerely,

V.V. Veeder

cc: Mr William Rowley QC: by fax 00 1 416 865 5519; Professor Michael Reisman: by fax 00 1 203 432 7247; Ms Margrete Stevens, ICSID by fax: 00 1 202 522 2615.

cc: Mexico and Canada; by fax.