

March 26, 2004

By Facsimile & E-Mail

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

Dear Members of the Tribunal:

In accordance with the Tribunal's order of March 19, 2004 and on behalf of respondent United States of America, we respectfully submit that the Tribunal should grant the applications for leave to file non-disputing party submissions, dated March 9, 2004, made by the International Institute for Sustainable Development ("IISD") and Bluewater Network, Communities for a Better Environment, the Center for International Environmental Law and Earthjustice (collectively, "Applicants").

Section B of the Statement of the NAFTA Free Trade Commission on Non-Disputing Party Participation (the "FTC Statement"), which governs the acceptance of non-disputing party submissions in this case, provides in pertinent part as follows:

[T]he Tribunal will consider, among other things, the extent to which:

- (a) the non-disputing party submission would assist the Tribunal in the determination of a factual or legal issue related to the arbitration by

bringing a perspective, particular knowledge or insight that is different from that of the disputing parties;

(b) the non-disputing party submission would address matters within the scope of the dispute;

(c) the non-disputing party has a significant interest in the arbitration; and

(d) there is a public interest in the subject matter of the arbitration.¹

The United States agrees with the Applicants that consideration of these four factors compels acceptance of their non-disputing party submissions.

First, the Applicants offer a perspective, particular knowledge or insight that is different from that of the disputing parties. The Applicants address the issues in this case from the perspective of non-governmental organizations with expertise in sustainable development and environmental protection. As the Applicants point out, their analyses of the issues differ from the arguments offered by the disputing parties.² Thus, these submissions may assist the Tribunal in its determination of the issues related to the arbitration.

Second, the Applicants' submissions address matters within the scope of this dispute. Each addresses issues framed by the pleadings of the disputing parties.

Third, it is clear from the content of their submissions that the Applicants have stated a significant interest in the arbitration. IISD has expressed that its interest in the arbitration stems from its commitment to sustainable development and environmental protection.³ Bluewater Network, *et al.* share an interest in this arbitration based on their dedication to "strengthening health and environmental protections"⁴

Finally, as the Tribunal has already recognized, "[t]here is undoubtedly a public interest in this arbitration."⁵ When considering the benefits and burdens of allowing non-disputing party submissions in 2001, the Tribunal was already inclined to allow such submissions.⁶ The United States agrees with the IISD that "nothing has in any way

¹ FTC Statement ¶ B(6).

² *See, e.g.*, Application for *Amicus Curiae* Status by the International Institute for Sustainable Development (IISD App.) ¶¶ 20-24 (distinguishing its submission from those made by the disputing parties); Application of Non-Disputing Parties for Leave to File a Written Submission of Bluewater Network, *et al.* (Bluewater App.) at 5 ("Applicants' submission is helpful to the Tribunal because it offers analysis of applicable rules and principles of international law that neither disputing party has presented to the Tribunal.").

³ *See, e.g.*, IISD App. ¶ 14.

⁴ Bluewater App. at 3.

⁵ Decision of the Tribunal on Petitions from Third Persons to Intervene as "*Amici Curiae*" ¶ 49 (Jan. 15, 2001).

⁶ *See id.* ¶ 52.

diminished the legitimate public interest in this arbitration that the Tribunal recognized three years ago.”⁷

Each of the FTC factors thus weighs in favor of granting leave to the Applicants to file non-disputing party submissions in this case. The United States respectfully submits, for the foregoing reasons, that the Tribunal should grant the Applicants’ submissions.

Respectfully submitted,

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⁷ IISD App. ¶ 27.