IN THE MATTER OF A CLAIM UNDER CHAPTER 11, SECTION A OF THE NORTH AMERICAN FREE TRADE AGREEMENT
and
IN THE MATTER OF AN ARBITRATION UNDER UNCITRAL ARBITRATION RULES

BETWEEN:

METHANEX CORPORATION

Claimant

and

THE UNITED STATES OF AMERICA
as represented by the DEPARTMENT OF STATE

Respondent

REJOINDER OF THE CLAIMANT TO THE PETITIONS OF THE INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT AND COMMUNITIES FOR A BETTER ENVIRONMENT, THE BLUE WATER NETWORK OF EARTH ISLAND INSTITUTES, AND THE CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW

National Law is inappropriate

1. The Respondent and Canada have both taken the position in these proceedings that *amicus curiae* petitions should be permitted.

2. To accept the position taken by the Respondent and Canada would effectively revert foreign investors to the application of the Calvo doctrine namely, that

law.[1]

3. The purpose for the introduction and advancement of bilateral investment treaties in general was to remove foreign investors from the uncertainty and vagaries of domestic law. The attempt to import U.S. domestic law respecting *amicus curi* into an international arbitration would be a retrograde step in the development of international law and international commercial arbitration. This is of particular relevance where one of the signatories to NAFTA, namely Mexico, does not have the concept of *amicus curiae*.

The need for a principled, reasoned decision

4. The submissions of the Respondent and Canada attempt to minimize the significance of permitting *amicus curiae* petitions by suggesting that on the particular facts of this case it would be appropriate to permit such petitions. The Respondent and Canada, by taking such a position argue they are not asking that a precedent be set. In fact, a procedural precedent will be set. The reasons for decision in this case will be used by future panels and by interested parties, if not on the basis of precedent, then certainly for its persuasive power and reasoning. While it may be expedient for political purposes for the Respondent and Canada to take a position favouring *amicus curiae* briefs in this case, the Panel should come to a principled, reasoned decision based on the UNCITRAL rules governing this arbitration.

[1] Dolzer and Stevens, Bilateral Investment Treaties

5. The Respondent, in its submissions, refers to the Appellate Body of the World Trade Organization and its position respecting *amicus curiae*. With respect, the Claimant submits that the WTO experience ought not be considered by the Tribunal as it is governed by completely different legislation. In any event, in the three cases which have considered the issue of *amicus curiae* submissions, not one has resulted in the effective use of such petitions.

6. In the *Shrimp and Shrimp Products* case, *amicus curiae* briefs were permitted only as attachments to a submission by the United States in its capacity as a member of the WTO. The Panel then elected to disregard the submission by the *amicus curiae*.

7. In the *Hot Rolled Lead and Bismuth Carbon Steel Products* decision, the two *amicus curiae* briefs filed were not explicitly taken into account by the Appellate Body when rendering its decision.

8. On November 16, 2000, all 17 applications by *amicus curiae* seeking leave in the *European Communities – Measures Affecting Asbestos and Asbestos Containing Products* case were rejected on the stated basis of procedural shortcomings.

9. The Claimant respectfully requests the petitions of those seeking *amicus curiae* status be dismissed and they be advised by the Tribunal that it has no jurisdiction to permit the filing of *amicus curiae* briefs or the participation of *amicus curiae* in these proceedings.

BAKER & McKENZIE
Barristers and Solicitors
BCE Place, 181 Bay Street
Suite 2100, P. O. Box 874
Toronto, Ontario M5J 2T3

J. Brian Casey - (416) 865-6979 - telephone
Janet E. Mills - (416) 865-6967 - telephone
(416) 863-6275 – facsimile

Counsel for the Claimant