IN THE ARBITRATION UNDER CHAPTER ELEVEN
OF THE NORTH AMERICAN FREE TRADE AGREEMENT
AND THE UNCITRAL ARBITRATION RULES
BETWEEN

POPE & TALBOT, INC.,

Claimant/Investor,

-and-

GOVERNMENT OF CANADA,

Respondent/Party.

EIGHTH SUBMISSION OF THE UNITED STATES OF AMERICA

1. Pursuant to Article 1128 of the North American Free Trade Agreement ("NAFTA"), the United States of America makes this submission on certain questions of interpretation of the NAFTA. Those questions were raised in the damages-phase hearing on November 15, 2001. No inference should be drawn from the absence of comment on any issue not addressed here.

2. In response to the arguments of Pope & Talbot, Inc. and the Tribunal's questions at the hearing on November 15, 2001, the United States incorporates here its positions and arguments in the attached Response of Respondent United States of America to Methanex's Submission Concerning the NAFTA Free Trade Commission's July 31, 2001 Interpretation, dated October 26, 2001.

Respectfully submitted,

Mark A. Clodfelter
Assistant Legal Adviser for International Claims and Investment Disputes
Barton Legum
Chief, NAFTA Arbitration Division, Office of International Claims and Investment Disputes
Alan Birnbaum
Attorney-Adviser, Office of International Claims and Investment Disputes
United States Department of State
Washington, D.C. 20520

December 3, 2001

IN THE ARBITRATION UNDER CHAPTER ELEVEN
OF THE NORTH AMERICAN FREE TRADE AGREEMENT
AND THE UNCITRAL ARBITRATION RULES
BETWEEN

METHANEX CORPORATION,

Claimant/Investor,

-and-

UNITED STATES OF AMERICA,

Respondent/Party.

RESPONSE OF RESPONDENT UNITED STATES OF AMERICA TO METHANEX'S SUBMISSION CONCERNING THE NAFTA FREE TRADE COMMISSION'S JULY 31, 2001 INTERPRETATION

Mark A. Clodfelter
Assistant Legal Adviser for International Claims and Investment Disputes
Barton Legum
Chief, NAFTA Arbitration Division, Office of International Claims and Investment Disputes
Alan J. Birnbaum
Andrea J. Menaker
Attorney-Advisers, Office of International Claims and Investment Disputes
UNITED STATES DEPARTMENT OF STATE
Washington, D.C. 20520

October 26, 2001

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IN THE ARBITRATION UNDER CHAPTER ELEVEN
OF THE NORTH AMERICAN FREE TRADE AGREEMENT
AND THE UNCITRAL ARBITRATION RULES
BETWEEN

METHANEX CORPORATION,

Claimant/Investor,

-and-

UNITED STATES OF AMERICA,

Respondent/Party.

RESPONSE OF RESPONDENT UNITED STATES OF AMERICA TO METHANEX'S SUBMISSION CONCERNING THE NAFTA FREE TRADE COMMISSION'S JULY 31, 2001 INTERPRETATION

Respondent United States of America respectfully submits this response to the letter submission, dated September 18, 2001, of claimant Methanex Corporation and to the Second Opinion of Sir Robert Jennings ("Second Jennings Op."), dated September 6, 2001. In that submission, Methanex asserts that the NAFTA Free Trade Commission ("FTC") interpretation, dated July 31, 2001, is immaterial to these proceedings and that the Tribunal should disregard that interpretation in the event that it finds the interpretation to support the United States' view of Article 1105(1) rather than that of Methanex.

Methanex's assertions are without merit. First, the FTC's binding interpretation is highly material: it establishes that many of Methanex's arguments based on Article 1105(1) are ill-founded. Indeed, prior to the FTC interpretation, Methanex repeatedly argued that the "fair and equitable treatment" obligation goes "far beyond" customary international law. *See* Methanex

Counter-Memorial at 8-11; Methanex Rejoinder at 32-34, 38-39. The FTC's binding interpretation conclusively establishes that the claims based on this view of Article 1105(1) are without merit.

Second, as demonstrated below, there is no merit to Methanex's four arguments that the FTC's binding interpretation should be disregarded.

I. THE TRIBUNAL MUST GIVE EFFECT TO THE FTC'S BINDING INTERPRETATION OF THE TERMS OF ARTICLE 1105(1)

NAFTA Article 1131, entitled "Governing Law," provides as follows:

> 1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.
>
> 2. An interpretation by the [FTC] of a provision of this Agreement shall be binding on a Tribunal established under this Section.

In submitting its claims to arbitration, Methanex expressly consented to "arbitration in accordance with the procedures set out in this Agreement." NAFTA art. 1121(1)(a); *id.* 1121(2)(a). Those procedures have at all times included those provisions empowering the FTC to issue binding interpretations of provisions of the NAFTA. Indeed, Methanex does not dispute that the FTC is authorized to issue interpretations of Article 1105 or that such interpretations are binding on this Tribunal.

Instead, Methanex suggests that the general principles of interpretation of the Vienna Convention on the Law of Treaties in some way override the specific provisions of the NAFTA as to the weight to be ascribed to binding interpretations of the FTC. *See* Sept. 18, 2001 Ltr. at 3-4. Methanex therefore suggests that, notwithstanding the FTC's binding interpretation, the Tribunal should continue to entertain Methanex's argument to the effect that the "ordinary meaning" of

Article 1105(1), which requires "treatment in accordance with international law," envisages that the Tribunal decide the issues not in accordance with rules of law, but rather in accordance with whatever the Tribunal may feel is "fair" or "equitable." *Id.* at 3 ("This Tribunal's role thus remains unchanged: Article 1105 requires it to determine, based on all the relevant facts and circumstances, whether the United States and the State of California treated Methanex and its investors fairly and equitably . . . . ").

Methanex's suggestions should be rejected. The meaning of Article 1105(1) is no longer open to debate. The FTC has issued an interpretation of that Article. That interpretation is binding on this Tribunal, as the plain text of Article 1131(2) explicitly provides. The interpretation forms part of the governing law for these proceedings. Methanex's arguments as to the meaning of Article 1105(1) can no longer be entertained to the extent that they are inconsistent with the FTC's binding interpretation.[1]

II. THE FTC INTERPRETATION IS NOT AN AMENDMENT OF THE NAFTA

Methanex suggests that the Tribunal may disregard the FTC's action on the ground that it was in reality a disguised amendment of a NAFTA provision rather than an "interpretation" and, thus, ineffective and an act of bad faith. *See* Sept. 18, 2001 Ltr. at 19-20.[2] Methanex's suggestion fails for three reasons.

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[1] As noted in the United States' letter dated October 11, 2001, Methanex offers no support whatsoever for its assertion that a negotiating draft of Article 1105(1) contained the word "customary" but was omitted thereafter. As stated in that letter, neither the United States nor the Government of Mexico is aware of any such draft.

[2] Specifically, Methanex states that "*[i]f* the FTC 'interpretation' is a disguised attempt to eliminate the express protections of Article 1105, including the protections of independent treaty obligations, then it is quite clearly an amendment of NAFTA, not a mere interpretation." Sept. 18, 2001 Ltr. at 19 (emphasis supplied). Methanex further states that "*if* the FTC's 'interpretation' is understood as an attempt to change the scope of Article 1105 *retroactively*, serious questions would arise as to whether the NAFTA Parties have interpreted Article 1105 'in good faith' by changing its originally-intended meaning in the midst of litigation." *Id.* at 20 (emphasis to "if" supplied, emphasis to remainder in original).

First, the FTC has expressly determined that its action was an interpretation of Article 1105(1).[3] Nothing in the NAFTA grants Chapter Eleven tribunals the authority to review such determinations made by the three NAFTA Parties, acting through their respective ministers of trade, sitting as the members of the FTC.[4]

Second, the FTC's binding interpretation plainly was not an amendment. As even Methanex's sources acknowledge, the longstanding debate among academics (not among States) concerning "fair and equitable treatment" has centered on whether the phrase should be interpreted to refer to the customary international law minimum standard of treatment of aliens or to incorporate some new standard based on subjective notions of what is "fair" or "equitable."[5] The FTC action established as to the NAFTA that one of those interpretations was correct and the other was not. Indeed, far from a departure from conventional views as to the content of "fair and equitable treatment," the FTC interpretation accorded with thirty years of State practice[6] and is fully consistent with the recent holding as to Article 1105(1) by the Supreme Court of British Columbia:

> In using the words 'international law', Article 1105 is referring to customary international law which is developed by common practices of countries. It is to be distinguished from conventional international law which is comprised in treaties

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[3] *See* FTC Interpretation at 1 ("the Free Trade Commission hereby adopts the following interpretations of Chapter Eleven in order to clarify and reaffirm the meaning of certain of its provisions"); *id.* at 2 ("The adoption by the Free Trade Commission of this or any future interpretation shall not be construed as indicating an absence of agreement among the NAFTA Parties about other matters of interpretation of the Agreement.").

[4] *Cf.* NGUYEN QUOC DINH, PATRICK DAILLIER & ALLAIN PELLET, *Droit international public* 570-71 (6th ed. 1999) ("The I.C.J., whose *mission is to apply international law*, has never refused to give effect to the juridical acts of the organs of the United Nations.") ("La C.I.J., dont *la mission est d'appliquer le droit international*, n'a jamais refusé de donner effet aux actes juridiques des organes des Nations Unies.") (translation by counsel; emphasis in original) (citing, among others, *Corfu Channel* (U.K. v. Alb.), 1949 I.C.J. 4, 26 (Apr. 9); *Competence of the General Assembly for the Admission of a State to the U.N.*, 1950 I.C.J. 4, 9 (Mar. 3); and *Lockerbie* (Libya v. U.K.), 1992 I.C.J. 3, 15 (Apr. 14)).

[5] *See, e.g.*, F.A. MANN, FURTHER STUDIES IN INTERNATIONAL LAW 238 (1990).

[6] *See* U.S. Memorial at 39-42.

> entered into by countries (including provisions contained in the NAFTA other than Article 1105 and other provisions of Chapter 11).

United Mexican States v. Metalclad Corp., 2001 BCSC 664 (May 2, 2001) at 23 ¶ 62. The FTC's binding interpretation, therefore, was just that, and not an amendment. Methanex's references to various articles in the popular press and letters from businesspersons certainly do not show otherwise.

Finally, Methanex's suggestion that there is anything "improper" about applying the FTC interpretation to pending arbitrations is fanciful. The NAFTA procedures to which Methanex consented provide for precisely such application: "An interpretation by the [FTC] of a provision of this Agreement *shall be binding* on a Tribunal *established* under this Section." NAFTA art. 1131(2) (emphasis added). This provision is not limited to tribunals in later-submitted cases; by its very terms, any tribunal "established" under Chapter Eleven is bound by the interpretation.[7] Furthermore, applying the FTC interpretation is not, contrary to Methanex's suggestion, a retroactive application of the law. *See* Sept. 18, 2001 Ltr. at 20. Rather, it is an application of the correct interpretation of the governing law, which remains unchanged.

III. ARTICLE 1105(1) PRESCRIBES THE CUSTOMARY INTERNATIONAL LAW MINIMUM STANDARD OF TREATMENT AND NO MORE

There is no merit to Methanex's contention that customary international law now encompasses the very same supposed obligations that Methanex only a few months ago asserted went "far beyond" customary international law. *First*, in its Memorial, the United States demonstrated that the mere fact that the words "fair and equitable treatment" appeared in a large number of bilateral investment treaties did not establish widespread State practice as to the

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[7] *See also* NAFTA art. 1126(8)-(9) (referring to "Tribunal *established* under Article 1120" in contexts where it is clear that reference is to tribunal in pending case).

content of that standard. *See* U.S. Memorial at 40-42 & n.53. The United States further demonstrated that all evidence of State practice of record establishes that States view "fair and equitable treatment" as a reference to the customary international law minimum standard of treatment of aliens, which supplies the content for that standard. *See id.*; U.S. Reply at 23-27. Methanex makes no attempt in its September 18 letter submission to controvert the United States' showing of State practice. Its contention that State practice in adopting BITs supports its new view as to the content of customary international law is without merit. The United States' position is, and the FTC's interpretation confirms, that "[t]he concepts of 'fair and equitable treatment' and 'full protection and security' do not require treatment in addition to or beyond what is required by the customary international law minimum standard of treatment of aliens." FTC Interpretation ¶ B(2). The customary international law minimum standard contains specific rules and, as demonstrated by the United States in its written and oral submissions (*see* U.S. Memorial at 43-48; U.S. Reply at 23-39; U.S. Rejoinder at 25-42; Tr. at 249-263), none of those rules is implicated by the measures Methanex challenges.

Second, contrary to Methanex's contention, "customary international law . . . concepts of equity, fairness, due process, and appropriate protection" do not support Methanex's position. Sept. 18, 2001 Ltr. at 11-12. The international decisions Methanex cites apply the general principle of equity as an interpretive guide, not as an independent obligation in international law.[8] Thus, those cases do not support Methanex's contention that under customary international

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[8] *See Barcelona Traction, Light and Power Co., Ltd.* (Belg. v. Spain), 1970 I.C.J. 3, 85-86 ¶ 36 (separate op. of Fitzmaurice, J.); *North Sea Continental Shelf* (F.R.G. v. Den.), 1969 I.C.J. 3, 48 ¶ 88; *Barcelona Traction, Light and Power Co., Ltd.* (Belg. v. Spain), 1964 I.C.J. 6, 62-63 ¶ 32 (separate op. of Koo, J.); *Diversion of Water from the River Muese* (Neth. v. Belg.), 1937 P.C.I.J. (ser. A/B) No. 70, 76 (June 28) (separate op. of Hudson, J.). *See also* Rejoinder Expert Report of Detlev F. Vagts at ¶¶ 4-9. The U.S. Supreme Court cases Methanex cites likewise are inapposite. *See First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 633-34 (1983); *National Bank of New York v. Republic of China*, 348 U.S. 356 (1955).

law States are required – in the absence of a specific rule of law – to treat investments in accordance with the concepts Methanex identifies. *See* Sept. 18, 2001 Ltr. at 11-14. Moreover, those cases do not define the concept of "equity" or identify when a "measure" would violate the principle of equity under customary international law. Neither do those cases address the concepts of "fairness," "due process," and "appropriate protection."

In fact, as noted in the U.S. Rejoinder (at 25-28), the International Court of Justice has expressly rejected a variant of Methanex's argument, holding that, in the absence of a specific obligation, the analogous general principle of "good faith" is not relevant. In *Land and Maritime Boundary* (Cameroon v. Nig.), 1998 I.C.J. 275, 296 ¶ 31 (June 11), the Court rejected the argument that Cameroon violated that principle by secretly preparing to invoke the Court's compulsory jurisdiction while maintaining contact with Nigeria on border issues. The Court explained that, "although the principle of good faith is 'one of the basic principles governing the creation and performance of legal obligations[,] . . . it is not in itself a source of obligation where none otherwise exist.'" *Id.* at 297 ¶ 39 (quoting *Border and Transborder Armed Actions* (Nicar. v. Hond.), 1988 I.C.J. 69, 105 ¶ 94 (Dec. 20)). Indeed, Methanex's principal expert agrees that this genre of argument is ill-founded. *See* Jennings Letter, July 6, 2001 ("one cannot bring a case in international law merely and solely by alleging a failure of good faith.").

Third, Methanex errs when it claims that the FTC interpretation does not preclude Article 1105 claims based on violations of other treaty obligations. *See* Sept. 18 Ltr. at 14. Methanex has repeatedly argued that Article 1105(1)'s reference to international law encompasses conventional law, as well as customary international law. *See* Methanex Counter-Memorial at 8 n.4; Methanex Rejoinder at 34-35. The FTC interpretation makes clear that this is not the case. FTC Interpretation ¶¶ B(1), (3). There is no longer any doubt as to the lack of foundation for

Methanex's arguments that Article 1105 permits claims based on violations of WTO or other conventional international obligations.

Finally, Methanex errs in its attempt to draw an adverse inference from the FTC interpretation's silence as to the content of the minimum standard of treatment under customary international law and as to Article 1101. Sept. 18, 2001 Ltr. at 16 (contending that "[t]he only fair inference . . . is that the members of the FTC could not or would not accede to the United States' litigating positions with respect to the meaning of "relate to" in Article 1101 or the substantive content of Article 1105."). The FTC made clear that no such inferences can be drawn, cautioning that "[t]he adoption by the Free Trade Commission of this or any future interpretation shall not be construed as indicating an absence of agreement among the NAFTA Parties about other matters of interpretation of the Agreement." FTC interpretation at 2.[9] The Tribunal, therefore, cannot infer from the FTC's silence what specific standard of customary international law the FTC would agree applies with respect to any particular aspect of the minimum standard of treatment of aliens or what interpretation should be given to the terms contained in any other Article in Chapter Eleven not addressed by the FTC.

IV. METHANEX'S CONTENTIONS BASED ON THE NAFTA'S MOST-FAVORED-NATION TREATMENT PROVISION ARE GROUNDLESS

Methanex suggests that the Tribunal should disregard the FTC's binding interpretation of Article 1105(1) because, it asserts, the NAFTA's requirement of most-favored-nation treatment permits the Tribunal to apply different provisions of other treaties that mandate "fair and

[9] Indeed, in a joint statement accompanying the interpretation, the FTC noted that it had convened a group of experts to discuss potential further interpretations of the investment chapter, making the inference Methanex seeks to draw particularly unreasonable.

equitable treatment" and "full protection and security." *See* Sept. 18, 2001 Ltr. at 21-22 (citing NAFTA art. 1103). Methanex's contention is without merit.

First, there is no Article 1103 claim in this case. *See* NAFTA art. 1119 (requiring notice of intent before claim may be submitted). Therefore, this argument should be rejected out of hand.

Second, Methanex fundamentally misconstrues the nature of Article 1103's provision for most-favored-nation treatment in any event. Contrary to Methanex's suggestion, Article 1103 addresses not the law applicable in investor-State disputes, but the actual "treatment" accorded with respect to an investment of another Party as compared to that accorded to other foreign-owned investments. Article 1103 is not a choice-of-law clause. Instead, it provides that each NAFTA Party shall accord to investors and their investments of other NAFTA Parties "treatment no less favorable than that it accords, in like circumstances," to investors or their investments of any other NAFTA Party or non-NAFTA Party "with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments." Thus, Methanex errs in relying on Article 1103 because it offers neither evidence nor argument to show that a foreign-owned investment allegedly in like circumstances was treated by the United States more favorably than it or its U.S. investments.

Finally, Methanex does not (and cannot) demonstrate that the "fair and equitable treatment" and "full protection and security" obligations in other United States' agreements are, in fact, different from the Article 1105(1) obligations. Methanex merely states that "*to the extent that* the investors of, *e.g.*, Argentina and Tunisia are entitled to 'fair and equitable treatment' and 'full protection and security' under treaty provisions that by their terms provide protection beyond the customary international minimum standard, Canadian (and Mexican) investors are

entitled to the same treatment under NAFTA's most-favored-nation provision." *Id.* at 22 (emphasis supplied). In fact, the language in the two bilateral investment treaties Methanex quotes is identical or virtually identical to language in numerous other bilateral investment treaties the United States entered into at the time of the NAFTA's negotiation and entry into force and thereafter.[10] Although the United States' contemporaneous statements (in U.S. State Department letters of submittal to the President) concerning those two earlier treaties do not specifically state that the "fair and equitable treatment" and "full protection and security" obligations are based on customary international law,[11] the United States' contemporaneous

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[10] *Compare* Treaty Concerning the Encouragement and Reciprocal Protection of Investment, Nov. 14, 1991, U.S.-Arg., art. II, para. 2(a), S. TREATY DOC. NO. 103-2 (1993) ("Investment shall at all times be accorded fair and equitable treatment, shall enjoy full protection and security and shall in no case be accorded treatment less than that required by international law."); *and* Treaty Concerning the Encouragement and Reciprocal Protection of Investment, May 15, 1990, U.S.-Tunis., art. II, para. 3, S. TREATY DOC. NO. 102-6 (1991) ("Investment shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security and shall in no case be accorded treatment less than that required by international law."); *with* Treaty Concerning the Encouragement and Reciprocal Protection of Investment, Dec. 16, 1994, U.S.-Uzb., art. II, para. 3(a), S. TREATY DOC. NO. 104-25 (1996) ("Each party shall at all times accord to covered investments fair and equitable treatment and full protection and security, and shall in no case accord treatment less favorable than that required by international law."); Treaty Concerning the Encouragement and Reciprocal Protection of Investment, Sept. 26, 1994, U.S.-Trin. & Tobago, art. II, para. 3(a), S. TREATY DOC. NO. 104-14 (1995) (same); Treaty Concerning the Encouragement and Reciprocal Protection of Investment, Mar. 7, 1994, U.S.-Geor., art. II, para. 3(a), S. TREATY DOC. NO. 104-13 (1995) (same); Treaty Concerning the Encouragement and Reciprocal Protection of Investment, Oct. 6, 1994, U.S.-Mong., art. II, para. 2(a), S. TREATY DOC. NO. 104-10 (1995) ("Investment shall at all times be accorded fair and equitable treatment, shall enjoy full protection and security and shall in no case be accorded treatment less than that required by international law."); Treaty Concerning the Encouragement and Reciprocal Protection of Investment, Apr. 19, 1994, U.S.-Est., art. II, para. 3(a), S. TREATY DOC. NO. 103-38 (1994) (same); Treaty Concerning the Encouragement and Reciprocal Protection of Investment, Mar. 4, 1994, U.S.-Ukr., art. II, para. 3(a), S. TREATY DOC. NO. 103-37 (1994) (same); Treaty Concerning the Encouragement and Reciprocal Protection of Investment, Feb. 4, 1994, U.S.-Jam., art. II, para. 2(a), S. TREATY DOC. NO. 103-35 (1994) (same); Treaty Concerning the Encouragement and Reciprocal Protection of Investment, Aug. 27, 1993, U.S.-Ecuador, art. II, para. 3(a), S. TREATY DOC. NO. 103-15 (1993) (same); Treaty Concerning the Encouragement and Reciprocal Protection of Investment, Apr. 21, 1993, U.S.-Mold., art. II, para. 3(a), S. TREATY DOC. NO. 103-14 (1993) (same); *and* Treaty Concerning the Encouragement and Reciprocal Protection of Investment, Sept. 23, 1992, U.S.-Arm., art. II, para. 2(a), S. TREATY DOC. NO. 103-11 (1993) (same).

[11] Significantly, the State Department's letters of submittal for these two BITs do not support Methanex's theory that "fair and equitable treatment" and "full protection and security" incorporate a dramatically different standard of treatment than that of customary international law. Indeed, the letter of submittal for the United States-Tunisia BIT seems to suggest a view of those phrases as reflecting a principle of interpretation rather than a substantive obligation of treatment. *See* Treaty Concerning the Encouragement and Reciprocal Protection of Investment, May 15, 1990, U.S.-Tunis., S. TREATY DOC. NO. 102-6 at vi-vii (1991) ("As does the model BIT, the treaty with Tunisia includes general treatment protections designed to be a *guide* to interpretation and application of the treaty. Thus, the Parties agree to accord investment 'fair and equitable treatment' and 'full protection and security' in no case 'less than that

statements concerning all the other treaties consistently make clear that those obligations are based on customary international law.[12] *See also* U.S. Memorial at n.53; Tr. at 243, 264.

At bottom, Methanex urges this Tribunal to disregard the NAFTA Parties' binding interpretation and, instead, by virtue of Article 1103, interpret Article 1105(1) in accordance with its own view of BIT language, which has never been accepted by any arbitral tribunal and is contrary to the United States' contemporaneous statements regarding the BITs. Such a position is not consistent with the most-favored-nation *treatment* obligation of Article 1103.

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required by international law.'") (emphasis supplied). The letter of submittal for the United States-Argentine BIT does not even reference the "fair and equitable treatment" or "full protection and security" obligations. *See* Treaty Concerning the Encouragement and Reciprocal Protection of Investment, Nov. 14, 1991, U.S.-Arg., S. TREATY DOC. NO. 103-2 at v-viii (1993).

[12] *See* Treaty Concerning the Encouragement and Reciprocal Protection of Investment, Sept. 23, 1992, U.S.-Arm., S. TREATY DOC. NO. 103-11 at viii (1993) ("Paragraph 2 further guarantees that investment shall be granted 'fair and equitable' treatment in accordance with international law. . . . This paragraph sets out a minimum standard of treatment based on customary international law."); Treaty Concerning the Encouragement and Reciprocal Protection of Investment, Apr. 21, 1993, U.S.-Mold., S. TREATY DOC. NO. 103-14 at ix (1993); Treaty Concerning the Encouragement and Reciprocal Protection of Investment, Oct. 6, 1994, U.S.-Mong., S. TREATY DOC. NO. 104-10 at viii (1995); Treaty Concerning the Encouragement and Reciprocal Protection of Investment, Feb. 4, 1994, U.S.-Jam., S. TREATY DOC. NO. 103-35 at viii (1994); Treaty Concerning the Encouragement and Reciprocal Protection of Investment, Apr. 19, 1994, U.S.-Est., art. II, para. 3(a), S. TREATY DOC. NO. 103-38 at ix (1994); Treaty Concerning the Encouragement and Reciprocal Protection of Investment, Mar. 4, 1994, U.S.-Ukr., S. TREATY DOC. NO. 103-37 at ix (1994); Treaty Concerning the Encouragement and Reciprocal Protection of Investment, Aug. 27, 1993, U.S.-Ecuador, S. TREATY DOC. NO. 103-15 at ix (1993); Treaty Concerning the Encouragement and Reciprocal Protection of Investment, Dec. 16, 1994, U.S.-Uzb., S. TREATY DOC. NO. 104-25 at viii (1996); Treaty Concerning the Encouragement and Reciprocal Protection of Investment, Sept. 26, 1994, U.S.-Trin. & Tobago, S. TREATY DOC. NO. 104-14 at viii-ix (1995); Treaty Concerning the Encouragement and Reciprocal Protection of Investment, Mar. 7, 1994, U.S.-Geor., S. TREATY DOC. NO. 104-13 at viii-ix (1995).

CONCLUSION

The Tribunal should reject the assertions in Methanex's Sept. 18, 2001 letter. Contrary to Methanex's arguments, the FTC interpretation is binding on this Tribunal and makes clear that Methanex's arguments based on the assertion that the "fair and equitable treatment" and "full protection and security" obligations go "far beyond" customary international law are incorrect.

Respectfully submitted,

Mark A. Clodfelter
Assistant Legal Adviser for International Claims and Investment Disputes
Barton Legum
Chief, NAFTA Arbitration Division, Office of International Claims and Investment Disputes
Alan J. Birnbaum
Andrea J. Menaker
Attorney-Advisers, Office of International Claims and Investment Disputes
UNITED STATES DEPARTMENT OF STATE
Washington, D.C. 20520

October 26, 2001