

METHANEX CORPORATION vs. THE UNITED STATES OF AMERICA

**A backgrounder on the controversial case under NAFTA's Chapter 11, and on
IISD's involvement**

About the Methanex case: The Methanex case is an investment dispute between Canada-based Methanex Corporation and the United States, based on the provisions in the North American Free Trade Agreement's (NAFTA) Chapter 11 on investment. Methanex is a major producer of methanol, a key component in MTBE (methyl tertiary butyl ether), which is used to increase oxygen content and act as an octane enhancer in unleaded gasoline. Methanex launched an international arbitration against the United States in response to the March 1999 order by the State of California to ban the use of MTBE by the end of 2002. California argues that banning MTBE is necessary because the additive is contaminating drinking water supplies, and is therefore posing a significant risk to human health and safety, and the environment. Methanex argues that the ineffective regulation and non-enforcement of domestic environmental laws, including the U.S. Clean Water Act, is responsible for the presence of MTBE in California water supplies. The company argues that the planned ban is tantamount to an expropriation of the company's investment; a violation of NAFTA's Article 1110, and was enacted in breach of the national treatment (Article 1102) and minimum international standards of treatment (Article 1105) provisions. It is seeking financial compensation from the United States in the amount of over \$900 million U.S.

IISD and the Methanex case. The International Institute for Sustainable Development (IISD) has sought to intervene on a number of levels in the Chapter 11 case of Methanex Corporation V. the United States of America. Through a [petition](#) (128kb) and a [final submission](#) (162kb) to the Methanex Tribunal on August 26, 2000, the IISD requested that it be permitted to submit an *amicus* ("friend of the court") brief to the NAFTA arbitral Tribunal hearing the case, after examining the submission and counter-submission of the litigating Parties. IISD also requested that it be allowed to make an oral submission in the proceedings, to support its (written) *amicus* submission, and that it be granted "observer status" at the oral proceedings. This three-pronged request was submitted to the tribunal on the basis that:

- Unlike most private or commercial arbitrations, there are great public interests in the Methanex case. IISD would help to represent these interests;
- The participation of IISD would help to build confidence in the dispute settlement system, regardless of the final decision of the Tribunal;

- Arbitrations ought to recognize legal principles of sustainable development – IISD could use its expertise to assist the Tribunal in incorporating these principles into its work; and
- Article 15 of the arbitral rules of procedure that apply to this case, the United Nations Centre for International Trade Law (UNCITRAL) rules, are broad enough to allow IISD a participatory role in the arbitral process.

Shortly after IISD submitted its petition to the Tribunal, Methanex opposed IISD's request. The company argued that the Tribunal had no authority to accept this petition, and that should it accept the Petition, this risked opening a floodgate of such interventions in the arbitration process in the future.

In October 2000, the United States formally supported the IISD intervention effort ([see submission](#): 152kb). In November, Canada also formally supported the intervention ([see submission](#): 115kb), while Mexico formally opposed the intervention ([see submission](#): 277kb).

In January 2001, the Tribunal ruled that it does have the authority to accept written amicus briefs, and that it is "minded" to accept IISD's petition in the Methanex case ([see ruling](#): 1092kb). Although the Tribunal did not issue an actual order allowing the amicus participation pending resolution of the preliminary phase of the case and the development of procedural rules on the intervention, IISD believes that this is an important decision in support of openness in Chapter 11 proceedings that have until now been quite secretive.

Status of the Methanex Case and IISD's Petition:

The United States has argued that the claims of Methanex are outside the scope of Chapter 11 and hence the Tribunal does not have the jurisdiction to rule on them. In addition, Methanex has sought to amend its original claims, and add new allegations of fact to support new allegations of breaches of Chapter 11. All these preliminary issues are now before the Tribunal, and will be resolved prior to any hearing on the merits, if one is indeed held.

March 2001: [Methanex files an amended claim](#) and argues that the principal U.S. producer of ethanol, an alternative to the methanol, "misled and improperly influenced the State of California" about MTBE, and that the Governor's ban order was "an arbitrary rush to judgment that was not based on a reasoned analysis of the evidence, nor a reasoned assessment of the risks, costs, and benefits of the ban and its alternatives"

April 2001: United States makes a submission on the jurisdiction issues in the case and argues that NAFTA Parties all agree on an interpretation of NAFTA's controversial investor-to-state provisions; one that supports the view of narrower grounds for investor challenges under NAFTA.

December 2001: Thus far, there have been a series of submissions and rebuttals submitted to the Tribunal. It is hoped that the Tribunal will render a decision on jurisdiction/the admissibility of the claim before January 2002. If the case does proceed on the merits, the IISD anticipates that it will receive the formal permission of the Tribunal to participate as an amicus in the Methanex case.

For more information on IISD and its Petition for *Amicus* status on the Methanex case see Howard Mann's "[Opening the Doors, at least a little: Comment on the Amicus decision in Methanex V. United States.](#)" RECIEL 10 (2, 2001): 241-245.