IN THE MATTER OF AN ARBITRATION UNDER CHAPTER 11 OF THE NORTH AMERICAN FREE TRADE AGREEMENT AND THE UNCITRAL RULES OF ARBITRATION

B E T W E E N :

METHANEX CORPORATION

Claimant/Investor

and

UNITED STATES OF AMERICA

Respondent/Party

THE WRITTEN REASONS FOR THE TRIBUNAL'S DECISION OF 7TH SEPTEMBER 2000 ON THE PLACE OF THE ARBITRATION

THE TRIBUNAL:

William Rowley QC;

Warren Christopher Esq;

V.V. Veeder QC (Chairman)

TABLE OF CONTENTS

THE TRIBUNAL'S WRITTEN REASONS FOR ITS DECISION OF 7TH SEPTEMBER 2000 ON THE PLACE OF THE ARBITRATION

I - INTRODUCTION

1. The Disputing Parties did not agree on the place of the arbitration. Pursuant to item 5 of the Order of the First Procedural Meeting held on 29th June 2000, each of the Disputing Parties was invited by the Tribunal to identify the place of the arbitration to be selected by the Tribunal in the exercise of its discretion under Article 1130 of the North American Free Trade Agreement ("NAFTA") and Article 16 of the UNCITRAL Arbitration Rules (the "UNCITRAL Rules"), the parties having agreed and confirmed to the Tribunal that this arbitration is subject to those Rules.

2. Article 1130(b) of NAFTA provides : *"Unless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in the territory of a Party that is a party to the New York Convention, selected in accordance with: ... (b) the UNCITRAL Arbitration Rules if the arbitration is under those Rules."* Article 16(1) of the UNCITRAL Arbitration Rules provides: "*Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be determined by the arbitral tribunal, having regard to the circumstances of the arbitration.*" This latter provision refers to the legal place or "seat" of the arbitration as distinct from the geographical place of the arbitration's hearing or hearings and deliberations by the Tribunal, a distinction to which the Tribunal returns below.

3. In compliance with item 12 of that same Order of 29th June 2000, the Claimant filed its written submissions on 16th August 2000; and the Respondent filed its written submissions on 1st September 2000. The issue was then addressed more fully by both parties in oral argument during the Second Procedural Hearing, which was held on 7th September 2000 at the World Bank, Washington DC, USA . The geographical place of

that hearing was expressly agreed by the Disputing Parties and fixed by the Tribunal without prejudice to the position of either party on the legal place of the arbitration.

II - THE DISPUTING PARTIES' CASES

4. The Parties' respective cases are helpfully set out in their respective written submissions, to which we return below, as supplemented by their oral submissions. There was much common ground as to the circumstances in this arbitration which were relevant to the exercise of the Tribunal's discretion in selecting the place of arbitration.

5. First, both Parties referred to factors listed in paragraph 22 of the UNCITRAL Notes on Organizing Arbitral Proceedings (the "UNCITRAL Notes"), which provides as follows:

> *"22. Various factual and legal factors influence the choice of the place of arbitration, and their relative importance varies from case to case. Among the more prominent factors are: (a) suitability of the law on arbitral procedure of the place of arbitration; (b) whether there is a multilateral or bilateral treaty on enforcement of arbitral awards between the State where the arbitration takes place and the State or States where the award may have to be enforced; (c) convenience of the parties and the arbitrators, including the travel distances; (d) availability and cost of support services needed; and (e) location of the subject-matter in dispute and proximity of evidence."*

The UNCITRAL Notes are not legally binding, both specifically in this case and more generally as paragraph 2 of the Notes makes clear. Nonetheless this list of factors provides a helpful starting-point to the practical exercise required under Article 16(1) of the UNCITRAL Arbitration Rules.

6. Second, although "neutrality" in the place of arbitration was invoked to differing degrees by the Disputant Parties, both Disputing Parties were agreed that the Tribunal' choice of place should be limited to a place within either Canada or the USA, excluding any place elsewhere within or without another Contracting State. By express agreement of the

Disputing Parties in this case, the Tribunal was therefore limited to selecting a place in either Canada or the USA notwithstanding the Claimant's Canadian nationality and the identity of the Respondent, the United States of America.

7. *The Claimant's Submissions*: The Claimant primarily contended that the place of arbitration should be Toronto, Ontario in Canada based upon the following principal factors taken from the UNCITRAL Notes:

8. *Factors A + B: "Suitability of the Law on Arbitral Procedure/Enforcement"*: The Claimant accepted that under this factor there was not a great deal to choose between a place of arbitration in either Canada or the United States. Nonetheless, the Claimant contended that Toronto was to be preferred over any seat in the United States because Ontario has adopted the UNCITRAL Model Law, which (it submitted) dovetailed with the UNCITRAL Arbitration Rules and the 1958 New York Arbitration Convention, to which both Canada and the Respondent are parties. In addition, the Claimant contended that the Model Law left little room for intervention by the Canadian Court, which could be of particular significance where (as is the case here) third persons seek leave to intervene in the arbitration and where any decision by the Tribunal on such intervention might be challenged by such persons before state courts. In these circumstances, the Claimant submitted, it is best for the arbitration to be situated in a legal regime where the possibilities in which a state court can review the Tribunal's decisions are both codified and restricted, as under the UNCITRAL Model Law.

9. *Factor C "Convenience of the Parties and the Arbitrators"*: The Claimant argued that the test to be applied is a balance of the relative "inconvenience" of the place of arbitration to the parties and the arbitrators. As to the latter, it noted that one of the members of the Tribunal is resident in Toronto, thus reducing accommodation and travel costs. As to the former, it contended that Toronto is the convenient half-way point between the Claimant's headquarters in Vancouver, British Columbia, Canada and the Respondent's governmental seat in Washington DC, USA. The Claimant relied on the fact that the Respondent maintained a consulate in Toronto; and it contended that the fact

that the Respondent may have many different departments involved in the case was no different from the Claimant having many different officers and directors also involved in the case. In addition, the Claimant argued that the Tribunal should have regard to the fact that the case has attracted considerable publicity in the USA (adverse to the Claimant); and that there would be less possible disruption from external sources if the place of arbitration were Toronto away from the USA, particularly California.

10. *Factor D "Availability/Costs of Support Services"*: The Claimant accepted that for this factor there was not a great deal to choose between the different locations, although hotels and meals would be slightly less expensive in Toronto than Washington DC. The Claimant also accepted that if the place of arbitration were Toronto, Goods and Services Tax ("GST") would have to be charged by the Tribunal for onward payment to the Canadian tax authorities. However, the Claimant noted that GST could only be charged to the Claimant because the Respondent would be zero-rated; and as the Claimant alone would have to pay the GST, it was not to be considered a relevant factor pointing away from Toronto. Moreover, even if the place of arbitration were to be in the USA, it was still possible that GST would be chargeable by the Canadian member of the Tribunal. In this event, the Claimant undertook to bear that charge by itself; and accordingly on any view GST was not a circumstance relevant to the Tribunal's decision.

11. *Factor E "Location of Subject Matter of Dispute"*: The Claimant contended that little weight should be given to the fact that the legislative measure complained of by the Claimant was a Californian measure - these are matters of public documented record. Similarly, the fact of the location of the Claimant's investment body in Dallas, Texas is not of great importance pointing towards a place in the USA. The Claimant's real loss is being suffered at the headquarters of the Claimant in Vancouver, British Colombia in Canada, pointing towards Toronto rather than a place in the USA.

12. *"Neutrality" Factor:* In addition to relying upon these factors listed in the UNCITRAL Notes, the Claimant raised "neutrality" as a further important factor in choosing a place of arbitration in international commercial arbitrations, such as the present arbitration. In

this case, so the Claimant submitted, neutrality pointed away from the USA and towards a city in Canada, such as Toronto, which was neutral as regards both the Claimant and the Respondent. It was not of course the Claimant's capital city, unlike Washington DC for the Respondent.

13. The Claimant placed great emphasis on the need for a place of arbitration to be perceived as neutral. This ruled out any place in California (in particular Sacramento) given the subject-matter of this arbitration, but equally Washington DC because this case was being defended by the Respondent. The Claimant contended that this approach was consistent with usual practice in international arbitrations. It accepted that the NAFTA cases decided thus far offer little assistance in this respect, and that the Tribunal would not in any event be bound to follow any previous decisions in NAFTA arbitrations. Further, the Claimant contended that neutrality would rule out anywhere in New York due to the legislation recently enacted in that State touching on the subject-matter of the present dispute; and indeed other like places elsewhere in the USA.

14. ***The Respondent's Submissions***: The Respondent contended that the place of arbitration should be Washington DC, USA by reference to the following principal factors, also taken from the UNCITRAL Notes:

15. *Factors A+ B "Suitability of the Law On Arbitral Procedure/Enforcement"*: The Respondent also accepted that on this factor there was little to choose between a place of arbitration in either Canada or the United States; and it relied on a passage to such effect in the decision on place of arbitration in *Ethyl Corporation v. Government of Canada*[1]. The Respondent considered that the UNCITRAL Model Law as applied in Toronto offered no real benefits over the United States law on arbitral procedure; and in particular that it would be of no greater assistance on attempted interventions from third persons

[1] *Decision dated 28th November 1997 (Prof Dr Karl-Heinz Böckstiegel, Messrs Charles N. Brower & Marc Lalonde) Regarding the Place of Arbitration in the NAFTA/UNCITRAL Case: Ethyl Corporation v. Government of Canada* 38 International Legal Materials 704. The claimant had contended for New York and the respondent for Ottawa or Toronto, with the tribunal selecting Toronto.

intent on judicial review of the Tribunal's decisions or awards. Indeed, the Respondent argued that US law is even more deferential to arbitration proceedings in that it does not allow any appeal by a party during the arbitration.

16. Further, the Respondent queried (without so contending in this case) whether it was wholly correct to assume that the Canadian Courts would apply the UNCITRAL Model Law to a NAFTA arbitration held in Toronto. The Respondent noted that Section 2(2) of the Ontario International Commercial Arbitration Act applies the Model Law only to "*international commercial arbitration agreements and awards*"; and by itself Chapter 11 of NAFTA is not, of course, a commercial arbitration agreement between the investor-claimant and the respondent-party state. If this legal analysis were correct, which would be decided by the Canadian Courts and not the Tribunal, an award made in Canada could not be challenged or enforced under the UNCITRAL Model Law.

17. In response, the Claimant relied on the text of the footnote to Article 1 of the UNCITRAL Model Law widely defining relationships of a "commercial" nature to include "investment" relationships. However, the issue may remain as to whether there could be any relevant "relationship" between an investor and a Party under NAFTA. In this respect, Article 1136(7) of NAFTA provides that: "*A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention and Article I of the Inter-American Convention.*" This express reference to the New York Convention, omitting any like reference to the UNCITRAL Model Law, leaves it perhaps unclear whether that same claim should also be considered to arise out of a commercial relationship or transaction for the purposes of the Model Law.

18. Subject to this point, the Respondent considered that, both Canada and the United States being parties to the New York Convention, there was nothing to choose between the two suggested locations.

19. *Factor C "Convenience of the Parties and the Arbitrators"*: The Respondent's position was that Toronto would be seriously inconvenient for the Respondent. Its consular post there is small and inadequate for the purpose of this arbitration, lacking even a law library. By contrast the Claimant would suffer no such inconvenience in Washington DC: its Counsel has substantial offices there housing over fifty lawyers. The nature of governmental decision-making and the necessary involvement of different governmental departments in this case means that Washington DC is to be favoured over Toronto: Washington DC is far more convenient to the Respondent than Toronto would be for the Claimant. The Respondent argued that the differences in terms of convenience of travel are *de minimis*. Finally, under this head, the Respondent argued that there was no evidence to support the contention of a greater likelihood of interference and disruption by third persons in Washington DC.

20. *Factor D "Availability/Costs of Support Services"*: The Respondent accepted that there is little to choose between the possible locations on this factor, save that the parties could benefit in Washington DC from the facilities offered by the World Bank at relatively little cost (compared to commercial facilities in Toronto). The Respondent also raised the possibility that, in addition to the GST issue, there might be a Provincial Services Tax payable if the arbitration were held in Toronto. Otherwise, the Respondent's position was that costs of support services should not be a significant factor given the magnitude of the costs of the arbitration generally.

21. *Factor E "Location of Subject Matter of Dispute"*: The Respondent contended that the location of the subject-matter of the dispute is clearly within the United States of America, where the measures complained of are in force. In this respect, it drew the Tribunal's attention again to a passage to such effect in the decision in *Ethyl Corporation v. Government of Canada* (see above). The Respondent also argued that it was not open to the Claimant to contend that it has suffered a loss in Canada: its claim is brought under Article 1105 ("Minimum Standard of Treatment") and Article 1110 ("Expropriation and Compensation") of NAFTA, both of which are concerned with

protection of the "investment"; and that investment is an enterprise located in the United States, not Canada.

22. *"Neutrality" Factor*: The Respondent relied on the historical fact that "perception of a place as neutral" was removed as a factor from an earlier draft of the UNCITRAL Notes on the grounds that it was unclear and potentially confusing[2]. The Respondent again referred to a passage supporting its argument in *Ethyl Corporation v. Government of Canada* (see above). In addition, the Respondent noted that NAFTA arbitrations to date where the respondent has been Canada have been held in Canada. Insofar as neutrality is to be considered, it only operated to favour Washington DC over a place in California. Further, the issue of neutrality could be addressed by holding the hearings in Washington DC at the headquarters of the International Centre for Settlement of Investment Disputes ("ICSID") in the World Bank, ICSID being an international organisation under the control of no single government.

III - THE TRIBUNAL'S REASONS

23. In the absence of the parties' agreement on the place of arbitration (save to exclude any place outside Canada and the USA), the Tribunal is required to choose for this arbitration a place of arbitration in either Canada or the USA in accordance with Article 1130(b) of NAFTA and Article 16(1)of the UNCITRAL Rules. Both Canada and the USA have enacted the 1958 New York Convention, satisfying the requirements of Article 1130(b); and the issue turns on the application of Article 16(1) to the particular circumstances of this arbitration.

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[2] Report to UNCITRAL, 28th session, Vienna, Paragraph 337, XXVI UNCITRAL Yearbook 1995.

24. Under Article 16(1) of the UNCITRAL Rules, the place of the arbitration is the legal place, or "seat", of the arbitration; and the Tribunal here makes no decision as to the geographical place of any particular hearing. Any such hearing could be held at a geographical place elsewhere than the legal place of arbitration in accordance with Article 16(2) of the UNCITRAL Rules, depending upon the convenience of witnesses, the parties and their legal representatives, together with other relevant circumstances. In this Decision, the Tribunal is not concerned with any such matters; and both Disputing Parties remain free hereafter to make an application for a particular hearing to be held in (say) British Colombia, Texas or California, without affecting the legal place of the arbitration or indeed the place where the Tribunal's award or awards are made. Accordingly, the Tribunal is here concerned solely with the question of the legal place of the arbitration.

25. The parties' submissions concentrated on the relative suitability of two places only: Toronto and Washington DC. There was, rightly for this case, very limited consideration given to other places within Canada and the USA, although there was some common ground that it would not be appropriate for the Tribunal to choose Vancouver (where the Claimant is based) or California (whose legislature passed the measure complained of). Given that no cogent reasons were advanced for having the arbitration in any other place in Canada or the United States, the Tribunal has similarly concentrated on the respective suitability of Toronto and Washington DC for this arbitration.

26. The Tribunal begins, as did the parties, with the factors listed in the UNCITRAL Notes. As regards Factors A and B, the Tribunal accepts that there is little to choose between Toronto and Washington DC in regard to suitability of the law on arbitral procedure and enforcement. The Tribunal concludes that, for all practical purposes in regard to this arbitration, the two potential places of arbitration may be considered equally suitable in terms of the law on arbitral procedure and enforcement.

27. Given that the Respondent did not eventually press its query relating to the application to this arbitration of the UNCITRAL Model Law as enacted in Ontario(see above), the Tribunal does not think it right for present purposes to second-guess the approach of the Canadian Courts. It is moreover an important and controversial issue better decided in a case which requires an actual decision by the appropriate tribunal, which is not the present situation in this arbitration. For these reasons, the Tribunal has placed no reliance on the query raised but apparently not invoked by the Respondent. No doubt it may be soon resolved in another NAFTA arbitration.

28. As to Factor C, the Tribunal considers that the convenience of the three arbitrators is irrelevant in this case when measured against other factors invoked by the Disputing Parties. As regards the convenience of the parties, the Claimant is correct in describing it here more as the balance of "inconvenience" rather than "convenience". The Tribunal also accepts that this balancing exercise must take into account both the parties and their Counsel, because the latter's extra travelling time and expenses will be borne ultimately as costs by the parties.

29. As for Toronto, the Tribunal decides that it not unduly inconvenient for the Claimant because, although not being Vancouver, the city is the home office of its Counsel. As for the Respondent, however, Toronto is materially inconvenient in contrast to Washington DC. The Tribunal accepts that Washington DC is of considerable convenience to the Respondent given the manifest involvement of different US governmental departments in the conduct of this arbitration. Conversely, Washington DC is not unduly inconvenient to the Claimant in view of the substantial and permanent office that its Counsel maintains in this city, in addition to its home office in Toronto. The Tribunal accepts the Respondent's argument that its consular post in Toronto, providing at best only limited and temporary facilities to the Respondent, is not remotely commensurate to the offices of a large international law firm, such as the Claimant's Counsel maintains in Washington DC. The Tribunal notes that the same approach was taken by the distinguished tribunal in its decision on place of arbitration in *Ethyl v Canada*.

30. The Claimant also expressed concerns over the possible disruption by mischievous outsiders to be arbitration proceedings if held in Washington DC. On the materials currently available, these concerns are not equally shared by the Tribunal; and in any event, the risk would appear to be the same for Toronto. The Tribunal considers nonetheless that the Claimant's concerns should be met if practically possible. To that end, if held in Washington DC, the Tribunal is minded to decide that this arbitration's hearings should be held at ICSID's facilities in the World Bank in Washington DC, so that the World Bank's security arrangements can limit any possibility for disruption. There are no greater secure facilities available in Toronto. Accordingly, subject to this qualification regarding security in Washington DC, the Tribunal does not accept that the Claimant's concerns favour Toronto.

31. As to this factor, the result of the balancing exercise must necessarily tilt the balance in favour of one party against the other; and the result must disappoint the latter. Nonetheless, the Tribunal considers that the relative inconvenience (and convenience) for the Disputing Parties and their Counsel clearly favours Washington DC over Toronto.

32. As to Factor D relating to the availability and costs of support services, the necessary support services would be available in both Toronto and Washington DC. The Tribunal accepts that generally accommodation and other commercial services would be less expensive in Toronto. However, as regards arbitration rooms and associated services, the Tribunal does not have in mind using commercial facilities in Washington DC but rather to accept ICSID's offer of the conference room, administrative and support facilities at the World Bank at rates which are apparently less than commercial rates for equivalent facilities in Toronto[3]. Provided this arbitration makes use of ICSID's facilities and although accommodation will be higher in Washington DC, the Tribunal does not consider that this factor favours Toronto

[3]The Disputing Parties confirmed during the Second Procedural Hearing that this offer of facilities was not dependent on ICSID being chosen to administer the arbitration pursuant to its Additional Facility Rules, as was also confirmed by ICSID.

33. As to Factor E relating to the location of the subject-matter of the dispute, the Tribunal considers that it points to a place in the USA as the place of arbitration. As appears from the Statement of Claim, the Claimant pleads issues whether *"the actions of the State of California failed to accord a minimum standard of treatment required under the provisions of Article 1105 of the NAFTA"* and whether *"the actions of the State of California and its Governor directly or indirectly constitute a measure which is tantamount to expropriation under Article 1110 of the NAFTA"* (paragraphs 39-40). Further, the Claimant's claim for damages alleges that the Californian measure *"has negatively impacted and will end Methanex US' business of selling methanol for use in MTBE in California"* (paragraph 35 of the Statement of Claim). Methanex US is a Texas general partnership. The fact that the investor's parent company (the Claimant) is based in Vancouver, Canada does not displace the fact that the Claimant's effective claim is based on alleged actions in the USA affecting a US enterprise. In the Tribunal's view, the subject-matter of the dispute is not located in Canada; and accordingly, whilst this factor bears only slight importance for this arbitration, the Tribunal considers that it favours Washington DC over Toronto.

34. In summary, in the Tribunal's considerations so far, the factors cited from the UNCITRAL Notes favour Washington DC over Toronto. The Tribunal now turns to the separate issue of neutrality, or perceived neutrality, which the Claimant invokes to favour Toronto over Washington DC.

35. For the purpose of the present case, the Tribunal does not place any great weight on the fact that neutrality as a factor was removed from the final version of the UNCITRAL Notes. The Tribunal's discretion turns on the broad concept of "circumstances" in Article 16(2) of the UNCITRAL Rules; and there is no linguistic or logical basis for excluding neutrality as a factor in an appropriate case. Accordingly, the Tribunal has considered neutrality as a possible circumstance in this arbitration.

36. However, in assessing the significance of neutrality or perceived neutrality, the Tribunal bears in mind (i) that it was open to the NAFTA Parties to agree that in the interests of neutrality Chapter Eleven disputes should be arbitrated in the territory of any third Party not directly involved in the dispute, yet they did not do so; and (ii) that in circumstances where (as in this case) the disputing parties have further limited the choice of place of arbitration by their arbitration tribunal to one or the other's state, a neutral national venue is simply not possible. In this arbitration, either the Claimant or the Respondent, effectively by their own choice, will have to arbitrate in the other's home state. Strict neutrality is perhaps a circumstance much to be desired for certain arbitrations; but it was not so desired by the parties to this arbitration.

37. Further, the Tribunal does not consider that the interests of neutrality are best served in this arbitration by applying any general principle strictly favouring the jurisdiction of the investor over the jurisdiction of the respondent; or indeed vice-versa. The previous NAFTA cases to which the Tribunal was referred were not of great assistance on this point, turning on agreement and other factors falling far short from establishing any general principle. In the Tribunal's view, the matter must be approached on a case-by-case basis, depending on the individual circumstances of the particular arbitration.

38. For this arbitration, the Tribunal considers that the requirements of neutrality are sufficiently met if the place of arbitration lies outside British Colombia (as the home of the Claimant), California (responsible for the legislative measure in issue) and Texas (as the home of Methanex US). Once these three locations are excluded, the question then arises whether Washington DC should also be excluded on grounds of neutrality because it is the Respondent's capital city, thereby (it might be said in sporting terms) requiring the Claimant to play away from home in its opponent's home stadium.

39. As to actual neutrality, from the information currently before it, the Tribunal can find no evidence of any difficulties for the Claimant. As to perceived neutrality, the point is answered by accepting ICSID's offer of the World Bank's facilities, summarised above.

Whilst Washington DC is of course the seat of federal government in the USA, it is also the seat of the World Bank and ICSID. The World Bank is an independent international organisation with juridical personality and broad jurisdictional immunities and freedoms (Article VII of its Articles of Agreement); and ICSID similarly has international legal personality and benefits from a wide jurisdictional immunity (Articles 18-20 of the Convention on the Settlement of International Disputes between States and Nationals of Other States). The Tribunal considers that the requirements of perceived neutrality in this case will be satisfied by holding such hearings in Washington DC as the seat of the World Bank, as distinct from the seat of the USA's federal government.

40. *Decision:* Balancing all these factors as circumstances relevant to the exercise of its discretion under Article 16(1) of the UNCITRAL Rules, the Tribunal considers that Washington DC, USA should be designated as the place of the arbitration. This decision was made and announced to the parties during the Second Procedural Meeting on 7th September 2000, subject to the subsequent making of reasons by the Tribunal.

41. *Claimant's Change of Counsel:* As recorded above, the Tribunal made its decision on 7th September 2000; and it prepared these reasons on the basis of the circumstances prevailing on the date of its decision. After that decision, by Notice of Change of Legal Counsel and Intent to File An Amended Claim dated 30th November 2000, the Claimant gave written notice to the Tribunal and the Respondent that it had changed its Counsel from Mr Casey and Ms Mills of Baker & McKenzie in Toronto, Canada to Messrs Duggan and Wilderotter of Jones, Day, Reavis & Pogue in Washington DC. USA. This change was prompted by a conflict of interest between the Claimant and Baker & McKenzie, as was separately explained by Mr Casey in his letter dated 1st December 2000 to the Tribunal and the Respondent. It did not result from the Tribunal's decision made on 7th September 2000 designating Washington DC as the place of the arbitration. Notwithstanding that the Claimant's new Counsel based in Washington DC could be a factor reinforcing our decision, we have decided that the Claimant's change of Counsel (together with the intimated amendment to its claim) should not form the basis for our

decision or constitute part of our reasons. Accordingly, the Tribunal places no reliance on these matters.

IV - THE TRIBUNAL'S DECISION

42. **For the reasons set out above, the Tribunal repeats and confirms its decision that Washington DC, USA shall be the place of arbitration in this arbitration. That decision was made and announced to the Disputing Parties at the conclusion of the Second Procedural Meeting on 7th September 2000, subject to the subsequent making of these reasons.**

Made by the Tribunal on 31 December 2000, as at Washington DC, USA.

William Rowley	V. V. Veeder	Warren Christopher
	(Chairman)	