In the Arbitration under Chapter 11 of the North American Free Trade Agreement and the UNCITRAL Arbitration Rules

between

Methanex Corporation, Claimant/Investor

and

United States of America, Respondent/Party

PETITIONER'S FINAL SUBMISSIONS

REGARDING THE PETITION OF THE INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT TO THE ARBITRAL TRIBUNAL FOR AMICUS CURIAE STATUS

October 16, 2000

Final Submissions submitted by

The International Institute for Sustainable Development

161 Portage Ave. East
6th Floor
Winnipeg, Manitoba
Canada, R3B 0Y4

Counsel for the International Institute for Sustainable Development:

Prof. Donald McRae
Faculty of Law
University of Ottawa
57 Louis Pasteur
Ottawa, Ontario,
K1N 6N5
Tel: (613) 562-5800, ext. 3304
Fax: (613) 562-5124
E-mail: dmcrae@uottawa.ca

Howard Mann
Barrister & Solicitor
424 Hamilton Ave. South
Ottawa, Ontario
Canada K1Y 1E3
Tel: (613) 729-0621
Fax: (613) 729-0306
E-mail: hmann@netcom.ca

In the Arbitration under Chapter 11 of the North American Free Trade Agreement and the UNCITRAL Arbitration Rules

between

Methanex Corporation, Claimant/Investor

and

United States of America, Respondent/Party

PETITIONER'S FINAL SUBMISSIONS

REGARDING THE PETITION OF THE INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT TO THE ARBITRAL TRIBUNAL FOR AMICUS CURIAE STATUS

Procedural History

1. On August 25, 2000, the International Institute for Sustainable Development (IISD), the Petitioner, filed a written Petition with this Tribunal seeking:

- permission to file an *amicus* brief in writing at an appropriate time in the proceedings, noting that such a brief would benefit from reading the memorial and counter-memorial of the two litigating parties prior to making its submission;
- permission to make oral submissions in support of the written brief at an appropriate time in the proceedings;
- permission to have observer status at the oral hearings in order to facilitate the most informed oral submissions possible. (Para. 5.1 of Aug. 25 Petition)

2. On August 31, 2000, Methanex Corp., Claimant in the present proceedings, filed submissions with the Tribunal opposing the granting of the Petition. No written arguments were filed by the Respondent United States of America. On September 6, 2000, the Petitioner filed a "Petitioner's Response" to the arguments submitted by Methanex Corp.

3. Also on September 6, 2000, an additional request from another potential *amicus*, Communities for a Better Environment and the Earth Island Institute, was filed with this Tribunal.

4. At a procedural hearing on September 7, 2000, the Tribunal decided to allow the potential *amici*, as well as the governments of Canada and Mexico, to submit final written arguments on or before October 13, 2000. By way of a letter dated October 11, 2000, this date was extended to October 16, 2000. These Final Submissions are in response to this decision of the Tribunal.

Summary of Preceding Submissions

5. In its original Petition of August 25, the IISD introduced itself to the Tribunal, and presented its arguments on why it believes accepting the petition is necessary in the present arbitration. (Sections 2, 3 of the Aug. 25 petition.) These arguments highlighted the important public interest nature of the present proceedings, as distinct from the traditional private commercial interests that arbitration processes normally address. They also noted the long history of the IISD in this area, and its ongoing participation in the development of international trade and investment law through its participation in an advisory capacity with such organizations as the World Trade Organization, the United Nations Commission for Sustainable Development, the Organization for Economic Cooperation and Development and the NAFTA-related Commission for Environmental Cooperation.

6. The Petition also noted the scope of the *amicus* brief that the IISD intends to submit if the Petition is acceded to. In particular, the Petitioner noted the need to take account of the legal principles of sustainable development, as the World Trade Organization has previously noted in environment-related cases. Recognition of this requirement remains absent from the pleadings submitted to date by the parties. (Para. 3.5 of Aug. 25 Petition)

7. The Petitioner then focused on the authority of this Tribunal to grant its request, in view of the broad discretion and flexibility of the Tribunal to manage its own process under Article 15 of the UNCITRAL Arbitration Rules, and the absence of any legal barrier to its acceptance. (Section 4, Aug. 25 petition)

8. Finally, the Petitioner, in making its requests to the Tribunal, noted its preparedness to comply with any obligations on confidentiality that the Tribunal may require in making an order acceding to the Petition.

9. In response, Methanex Corp. raised several issues opposing the Petition in its submission of August 31, 2000. In the Petitioner's Response on September 6, 2000, the main issues were addressed seriatim. Some additional arguments are made below, in particular in relation to confidentiality issues.

The Increased Urgency for Amicus Participation

10. As the response to Methanex submissions of September 6, 2000 was being prepared, the decision of the NAFTA Chapter 11 Tribunal in *Metalclad and The United Mexican States* was released.[1] In para. 15 of the response, the Petitioner drew the Tribunal's attention to the advantage that would accrue from granting the Petitioner *amicus* status in helping to remedy the public perception of NAFTA's Chapter 11 process as closed, secretive, non-transparent and one-sided, as well as being not disposed to take account of the environmental issues at stake in the cases brought under it. The Petitioner argued that the need to remedy that perception has been rendered more acute by the *Metalclad*

[1] *Metalclad Corporation v. United Mexican States*, International Center for Settlement of Investment Disputes (Additional Facility), August 30, 2000, Case No. Arb (AF)/97/1, at para. 13. (Tab 1)

decision, and that a properly established process for the *amicus* status will enhance the public acceptability of any ultimate decision of this Tribunal, and hence of the Chapter 11 process.

11. The Petitioner understands that the present submissions are not an appropriate place to argue the merits of the *Metalclad* decision or the positions of the parties in relation to that decision. Still, the Petitioner believes that it is important to indicate the elements of the decision that make the role of an *amicus* all the more compelling in the present case.

12. The *Metalclad* Tribunal expressly recognizes that the preamble to a treaty is relevant to establishing its context and hence the interpretation of its provisions. (Para. 70) As the Petitioner has noted in its original petition (paras. 3.4, 3.5), the preamble includes at least four references of relevance to determining the rights and obligations of NAFTA, including Chapter 11, in an environmentally-related context:

- the undertaking to pursue each of the commercial objectives of the NAFTA in a manner consistent with environmental protection and conservation;
- the preservation by the Parties of their flexibility to safeguard the public welfare;
- commitment to strengthen the development and enforcement of environmental laws and regulations;
- and the commitment to promote sustainable development.

13. The Tribunal in the *Metalclad* arbitration does not mention any of these provisions. Rather, it focuses exclusively on the economic objectives of NAFTA, referring expressly to four other NAFTA objectives as legal underpinnings for the interpretation of Chapter 11:

- Transparency in government regulations and activity (para. 70-71);
- The substantial increase in investment opportunities (para. 70, 75);
- To ensure a predictable commercial framework for business planning and investment (para. 71); and to
- "Ensure the successful implementation of investment initiatives" (para. 75).[2]

14. The Petitioner, of course, does not deny the relevance of the economic objectives of NAFTA to its appropriate interpretation. However, the reliance on such objectives to the exclusion of other equally important underlying provisions is of great concern to the Petitioner and to the public at large. This ignores the counterbalance included in the preamble to NAFTA relating to environmental protection and sustainable development as equal underlying principles.

15. Given that all three NAFTA Parties made submissions in the *Metalclad* case, the absence of any reference to the environmental and sustainable development goals noted above is all the more troubling. It is precisely to the role of these principles, which stem directly from the preamble of NAFTA and which have already been recognized as

[2] Despite the reference in the original decision to NAFTA Article 102(1) in relation to this last sentence, no such language appears in the text of NAFTA.

relevant in the WTO Agreements context due to their inclusion in the preamble to that instrument in 1994, and which have only been cited in part heretofore by the United States as respondent in the present arbitration, that the Petitioner seeks to address itself. It is particularly qualified to do so, given its international record and advisory role in this area.

16. The Petitioner believes it is the role of an *amicus* to bring to the Tribunal its own independent views on the law at issue as well as on the implications of possible legal results. This is especially beneficial to the Tribunal when the implications of the Tribunal's determination will extend, as in the present case, beyond the specific facts of the case at bar.

17. A critical example of the implications of *Metalclad's* exclusionary legal analysis arises in relation to that Tribunal's discussion of Article 1110 of NAFTA, which Methanex has alleged was breached in the present case. In para. 103 of its decision, the Tribunal states that expropriation under Article 1110 "includes not only open, deliberate and acknowledged takings of property, such as outright seizure or formal or obligatory transfer of title in favour of the host State, but also covert *or incidental interference with the use of property which has the effect of depriving the owner, in whole or in significant part, of the use or reasonably-to-be-expected economic benefit of property* even if not necessarily to the obvious benefit of the host State." Given that environmental protection laws can hardly be effective if they do not have some impact on the use of property by business, the approach of the *Metalclad* tribunal appears to have far-reaching implications for environmental protection. It also appears to run the risk of turning the "polluter pays" principle of environmental management, established by the OECD in 1972, into a "pay the polluter" principle. This, among others, is an issue that the Petitioner would wish to address in an *amicus* submission.

18. The present Tribunal, through no design of its own, now finds itself presiding over perhaps the most critical Chapter 11 litigation to date. The nature of this case is such that issues that were not addressed in the *Metalclad* decision cannot be ignored here. Thus, any determination that lies ahead must be fully informed by an understanding of all of the perspectives that bear on the legal obligations that are at issue. It is to ensure that this is done that the Petitioner requests the Tribunal to exercise the discretion it undoubtedly has, in the exercise of its inherent powers to control its own process, to permit the participation of the Petitioner as *amicus*. Moreover, that *amicus* participation should, subject to relevant legal constraints and the need to manage the arbitration efficiently, be enabled to function in a manner that will make it as effective and productive as possible.

Further Submissions of the Petitioner

19. The Petitioner re-iterates the arguments previously submitted, and presents the following additional submissions to the Tribunal for its consideration.

The Claim That the "Floodgates" Will Open

20. Methanex Corp. in its submissions opposing the Petition argues, *inter alia*, that acceding to the petition "may well cause other groups to seek the same status." (Methanex submissions, Aug. 31, para. 17.) The Petitioner agrees, and indeed hopes and anticipates that other civil society groups will seek *amicus* status in future cases if this Petition is granted. However, any implication this might create some type of flood of *amicus* petitions is simply unfounded.

21. In this regard, the experience of the World Trade Organization (WTO) is instructive. Both WTO panels and the Appellate Body have received *amicus* submissions since the 1998 Appellate Body ruling in the so-called *Shrimp-Turtle* case first allowed *amicus* submissions to be taken into account.[3] However, the highest number of *amicus* submissions received in a single case by a WTO panel has been four and the highest number received by the Appellate Body is just three. This is understandable. Public interest and civil society groups simply do not have the resources to flood trade dispute settlement processes with briefs. Moreover, the numbers referred to here include briefs from industry and not just from environmental groups.

22. In short, the spectre of a tidal wave of *amicus* briefs drowning the Chapter 11 process is nothing more than fanciful.

The Absence of a Barrier in NAFTA and the UNCITRAL Arbitration Rules

23. Article 1120 of the NAFTA provides that "The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section" **(**Section B of Chapter 11**)**. The Petitioner has already demonstrated in its submissions that nothing in the applicable UNCITRAL Arbitration Rules or in the NAFTA prevents this Tribunal from granting the requested *amicus* status. This includes enabling the Petitioner to view the memorials and counter-memorials prior to making its written submissions, being present at the oral hearings, making oral submissions and ensuring the Tribunal is able to pose any questions in relation to the substantive submissions that may arise out of the arguments of the parties.

The False Issue of Confidentiality

24. The Petitioner has already pointed out that the *in camera* rule, raised by Methanex in its August 31 submissions, does not provide a barrier to this petition. It does not override the authority of the Tribunal under Article 15 to conduct the arbitration in the manner it deems appropriate. Rather, it simply begs the question. The scope of who can be *in camera* depends on who has been authorized by the Tribunal to be in the room in an *in camera* session. The presence for whole or part of the proceedings of an *amicus curiae*, when so authorized by the Tribunal, does not make proceedings any less "in

[3] *United States-Import Prohibition of Certain Shrimp and Shrimp Products*, Report of the Appellate Body of 12 October 1998, WT/DS58/AB/R.

camera". Equally, where the Tribunal grants an *amicus* authority to view the memorial and counter-memorial, this does not breach any *in camera* rule.

25. Nor is there any general principle of confidentiality that stands in the way of this Petition. Indeed, the Tribunal in the *Metalclad* case noted the absence of any general rules on confidentiality applicable to these types of proceedings. In its final decision, the *Metalclad* tribunal reprinted the text of a determination previously made on October 27, 1997, which dealt with the issue of confidentiality. In that determination, the Tribunal recognized that there is no general principle of confidentiality in the NAFTA or in the ICSID (Additional Facility) Rules, nor in the UNCITRAL Rules or the draft Articles on Arbitration adopted by the International Law Commission. It also acknowledged that a public company has positive obligations to provide certain information and that both the Claimant and the respondent government may be under duties of public disclosure.[4]

26. A similar view was expressed by the Chapter 11 tribunal in *S.D. Myers v. Canada,* in relation to Procedural Order No. 16. The Tribunal said:

> The Tribunal considers that, whatever may be the position in private consensual arbitrations between commercial parties, it has not been established that any *general principle* of confidentiality exists in an arbitration such as that currently before this Tribunal. The main argument in favour of confidentiality is founded on a supposed implied term in the arbitration agreement. The present arbitration is taking place pursuant to a provision in an international treaty, not pursuant to an arbitration agreement between the disputing parties.
>
> There is no direct contractual link between the disputing parties in the present case, and there is no arbitration agreement between them. In the absence of an established *general principle* it is necessary to examine the treaty itself and the UNCITRAL Rules, which apply to the arbitration proceedings by election of Myers exercising its right under Article 1120 of the NAFTA, as well as the Tribunal's previous procedural orders.[5]

27. The absence of clear rules in this whole area has meant that when Tribunals have been called upon to address specific or more difficult questions, they make their own decisions on a case-by-case basis. This has led to different of approaches among the Tribunals:

- The Tribunal in Metalclad adopted a qualified confidentiality order, but made it clear this was not based on a legal obligation or rule to do so.[6]
- The tribunal in *S.D. Myers* decided that it would be a breach of the confidentiality order previously adopted in that case for the government of

[4] *Metalclad, supra,* n. 1, para. 13.
[5] *In a NAFTA Arbitration Under the UNCITRAL Arbitration Rules between S.D. Myers, Inc. v. Canada* Procedural Order No. 16, 13 May 2000, paras. 8-9. Original emphasis. (Tab 2)
[6] *Metalclad, supra*, n. 1, para. 13.

Canada to pass documents on to provincial representatives on the C-Trade Committee in Canada.[7]

- The tribunal in the Chapter 11 arbitration in *Pope & Talbot v. Canada* came to the opposite conclusion on precisely the same question of Canada providing documents to the provincial representatives on the C-Trade Committee. Although it initially took the view that providing the documents to the provincial representatives would be a breach of its original order on confidentiality, it amended this order at the request of Canada to allow for transmission of the documents subject to an undertaking to respect their confidentiality. Thus, the Tribunal indicated that this would not be in breach of any other source of rules, in particular the UNCITRAL Arbitration Rules it was operating under.[8] Further, since this resulted from a request by Canada, it is clear that Canada must have been of the view that no confidentiality rules would be violated by providing documents to those who had no specific role in the arbitration.[9]

28. These cases demonstrate the absence of one single approach to addressing confidentiality issues. Moreover, in none of the cases so far has a tribunal considered the issue in the light of a request for *amicus* status. It is clear, therefore, that faced with a new and substantially different question, the present Tribunal is in a position to consider this matter in the light of the particular circumstances of this case.

29. Furthermore, the issue of confidentiality must be placed in perspective. The Petitioner is aware that access to key materials, such as memorials and counter-memorials can be obtained through an application pursuant to the Freedom of Information Act of the Respondent party, the United States. Such access has been granted in at least one other Chapter 11 case to date, as well as, it appears, for existing documents in the present case. (Petitioner's Response, Sept. 6, para. 6) The Petitioner thus reiterates its previous submission that in requesting that the Tribunal allow an *amicus* submission to be informed by such materials in the present case, the Petitioner is requesting no more than it is entitled to under applicable United States legislation.

---

[7] Procedural Order 16, s*upra*, note 5. The C-Trade Committee is a federal-provincial committee dealing with trade policy issues. It has no direct relationship to any specific Chapter 11 cases, which are handled on an *ad hoc* basis based on specifically interested parties and provinces. [7] In its determination, the *Myers* Tribunal did state that "Much of this material would otherwise have been presented at the hearing and, pursuant to Article 25.4 of the Rules, would have remained private between he parties and the Tribunal." (para. 11) However, there was no application for an *amicus* before that Tribunal and no other outside persons were involved in the process.

[8] Written decision of Lord Dervaird, Presiding Arbitrator, NAFTA UNCITRAL Investor State Claim, Pope & Talbot Inc and the Government of Canada, 2 April 2000. (Tab 3)

[9] It is worth noting that Counsel for the Claimant investor in both the *Myers* and *Pope & Talbot* cases was the same, Appleton and Associates, as was the respondent country, Canada. Thus, one can expect that the arguments made were similar in both cases, although the results differed completely.

The Confidentiality Order of September 7

30. At its procedural meeting of September 7, 2000, the Tribunal endorsed a confidentiality order presented by the Parties. This Order was raised by Methanex when it was in draft form as a basis for opposing the Petition. (Methanex Submissions, August 31, para. 6) However, the procedural Order does not tie the hands of the Tribunal in relation to this petition. The Procedural Order on confidentiality was adopted at the same time and with full knowledge that the decision on the IISD Petition was being deferred pending further submissions. For a party to suggest now that the adoption of that Procedural Order somehow precludes the Tribunal from granting the Petition would be tantamount to an allegation of bad faith that has no place in these proceedings.

The Exercise of the Discretion to Permit an Amicus Curiae

31. As the Petitioner indicated in its earlier submissions, it has approached the Tribunal in this manner in order to allow the Tribunal to develop an orderly process for the granting to the Petitioner of *amicus* status, including the specific rights, privileges and obligations that attach to it.

32. In the WTO, the Appellate Body, when faced with the question of accepting *amicus* petitions under its own general authority to manage its process, has focused on the question of what information "we believe is pertinent and useful in an appeal"[10] as the basis for determining whether it should consider an *amicus* brief. The Appellate Body has summed it up this way:

> We are of the opinion that we have the legal authority under the DSU to accept and consider *amicus curiae* briefs in an appeal in which *we find it pertinent and useful to do so."*[11]

33. This approach is generally consistent with that adopted in the Supreme Court of Canada. While some lower courts do have specific tests and criteria for *amicus* interventions, the Supreme Court of Canada, which like the WTO Appellate Body and this Tribunal *is not subject to appeal* on the merits of its final decisions, adopts a broadly worded standard for accepting potential *amicus* briefs and the subsequent decisions on permitting oral arguments. Rule 18(3) of the *Rules of the Supreme Court of Canada* sets out two simple tests for permitting an intervention: does the intervener have an interest in the issue and does the Court believe that the submissions will be useful to the Court and different from those of the other parties.[12]

---

[10] *United States-Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom*, Report of the Appellate Body of 10 May 2000, WT/DS138/8, para. 39

[11] Ibid, para. 42, emphasis added.

[12] *Rules of the Supreme Court of Canada*, Rule 18(3)(a) and (c) respectively. (Tab 4) This description of the tests in Rule 18(3) is derived from the Supreme Court of Canada decision in *Reference re Workers' Compensation Act, 1983 (Nfld.) (Application to Intervene)*, [1989] 2 S.C.R. 335, internet version reprinted at Tab 6, at p. 3.

34. The most recent interpretations of these standards by the Supreme Court of Canada (S.C.C.) exhibit a broad understanding of their intended scope. In *R. v. Finta* (1993), a case concerning the prosecution of alleged war criminals, the S.C.C. found that the requisite interest was established where the potential *amicus* interveners had

> an interest in ensuring that the interpretation of the *Criminal Code* provisions on appeal is consistent with the preservation of issues within is mandate. Through either the people they represent or the mandate which they seek to uphold, these applicants have a direct stake in Canada's fulfilling its international legal obligations under customary and conventional international law. While the Court is often reluctant to grant intervener status to public interest groups in criminal appeals, exceptions can be made under its broad discretion where important public law issues are considered, as in this appeal.[13]

35. The S.C.C. had previously given the test the widest possible scope, arguing in at least two cases that "any interest is sufficient, subject always to the exercise of discretion."[14] Even if one does not accept such a broad interpretation, the undoubted intent of a broad application of the rules is patent.

36. On the question of usefulness of submissions, the S.C.C. has stated that this criterion is "easily satisfied by an applicant who has a history of involvement in the issue giving the applicant an expertise which can shed fresh light or provide new information on the matter." The Court carried on to note that "an intervention is welcomed if the intervener will provide the Court with fresh information or a fresh perspective on an important constitutional or public issue."[15] In *R. v. Finta*, the S.C.C. considered whether the intended submissions offer "useful and novel submissions" or "distinctive contributions".[16]

37. It is the Petitioner's understanding that the practice in the Supreme Court of the United States is governed by similarly broadly formed standards. Generally, *amicus* briefs will be permitted where the proposed *amicus* illustrates a special interest which the parties may not approach in the same way. In this context, the presentation of information concerning the impact that the determination of the case will have on non-parties is a primary function of an *amicus* brief.[17]

---

[13] *R. v. Finta* [1993] 1 S.C.R. 1138, internet version reprinted at Tab 5, section 1. p. 3-4.

[14] *Norcan Ltd. V. Lebrock*, [1969] S.C.R 665, as quoted in *Reference re Workers' Compensation Act, 1983 (Nfld.) (Application to Intervene)*, [1989] 2 S.C.R. 335, internet version reprinted at Tab 6, at p. 4. In the latter case, the S.C.C. specifically notes the "aura of unfairness" in terms of an imbalance in representation of interests that the exercise of the discretion in favour of the potential intervener can remedy. At p. 4.)

[15] *Reference re Workers' Compensation Act, 1983 (Nfld.) (Application to Intervene)*, [1989] 2 S.C.R. 335, internet version reprinted at Tab 6, at p. 4. The latter passage is quoted from Brian Crane, *Practice and Advocacy in the Supreme Court*, British Columbia Continuing Legal Education Seminar, 1983)

[16] *R. v. Finta* [1993] 1 S.C.R. 1138, internet version reprinted at Tab 5, section 2., p. 4.

[17] See generally Stern *et al*, *Supreme Court practice*, 7th Ed., Washington D.C., Bureau of National Affairs, 1993, pp. 559-566.

38. The absence of an appeal from this proceeding is important in the context of standards for permitting an *amicus*. The implications of this case for the public, as already noted, are great. They concern the impact of Chapter 11 on the real ability of governments to protect the environment and to protect the public health and welfare from environmental impacts. The Petitioner submits that, where the implications of a judgment for non-parties to the proceeding can be so broad and far reaching, the Tribunal should act in a manner that best ensures it is fully and thoroughly informed of all perspectives on the legal issues before it. Given the lack of an appeal process, an error resulting from excluding a relevant and fresh perspective can never be remedied.

39. The power of the Tribunal to determine its own procedure places in the Tribunal's hands the ability to determine the scope of an *amicus* intervention. In the Petitioner's view, the primary consideration in determining the appropriate scope of an *amicus* intervention is the need to ensure that the Tribunal is able to be fully informed of the views that the IISD can bring to the consideration of this issue. For this reason, the Petitioner has noted the need to for the Tribunal to have an opportunity to pose questions to the Petitioner, as well as the opportunity for the Petitioner to understand fully the positions of the Parties both through receipt of the written submissions and attendance in the oral proceedings. In this way the Institute as *amicus* can provide the greatest assistance to the Tribunal. Should the Tribunal grant this petition, the Petitioner will, of course, observe the conditions laid down by the Tribunal governing its participation.

The Opportunity Presented to this Tribunal

40. As the Petitioner has pointed out, the public credibility of the NAFTA Chapter 11 process is at a critical point. By providing for an orderly process for *amicus* participation, the Tribunal will not only enable itself better to address the issues that are both directly and indirectly at stake in this case, but it will also provide a sound basis for other Chapter 11 tribunals to deal with requests for *amicus* status.

Conclusion

41. The Petitioner hereby repeats its original request to the Tribunal, that it grant:

a) Permission to file an *amicus* brief in writing at an appropriate time in the proceedings. In order to make the most effective submissions, the Petitioner would benefit from reading the memorial and counter-memorial of the two litigating parties prior to making its submission. However, the Petitioner is also sensitive to any concerns the parties and Tribunal may have not to unduly extend these proceedings, and not to prevent the possibility that jurisdictional issues raised by the United States may be heard as a preliminary matter. Thus, the Petitioner is in the hands of the Tribunal as to the most appropriate timing for the filing of the brief.

b) Permission to make an oral submission in support of the written brief at an appropriate time in the proceedings.

c) Permission to have observer status at the oral hearings in order to facilitate the Petitioner in making the most informed oral submissions possible.

Respectfully submitted this 16th day of October, 2000.

Counsel for the International Institute for Sustainable Development

Prof. Donald McRae
Faculty of Law
University of Ottawa
57 Louis Pasteur
Ottawa, Ontario,
K1N 6N5
Tel: (613) 562-5800, ext. 3304
Fax: (613) 562-5124
E-mail: dmcrae@uottawa.ca

Howard Mann
Barrister & Solicitor
424 Hamilton Ave. South
Ottawa, Ontario
Canada K1Y 1E3
Tel: (613) 729-0621
Fax: (613) 729-0306
E-mail: hmann@netcom.ca

LIST OF ATTACHMENTS