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New York Toronto

**NOTICE OF ARBITRATION
UNDER THE ARBITRATION RULES OF THE
UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW AND
THE NORTH AMERICAN FREE TRADE AGREEMENT**

BETWEEN:

ETHYL CORPORATION

Claimant / Investor

v.

GOVERNMENT OF CANADA

Respondent / Party

Pursuant to Article 3 of the United Nations Commission on International Trade Law (UNCITRAL) and Articles 1116 and 1120 of the North American Free Trade Agreement (NAFTA), the Claimant initiates recourse to arbitration under the UNCITRAL Rules of Arbitration (Resolution 31/98 Adopted by the General Assembly on 15 December 1976).

A. DEMAND THAT THE DISPUTE BE REFERRED TO ARBITRATION

The Claimant hereby demands that the dispute between it and the Respondent be referred to arbitration under the UNCITRAL Rules of Arbitration.

B. NAMES AND ADDRESSES OF THE PARTIES

**Claimant/
Investor** **ETHYL CORPORATION**
330 South Fourth Street
Richmond, VA
23219

**Respondent/
Party** **GOVERNMENT OF CANADA**
Office of the
Deputy Attorney General of Canada
Justice Building
239 Wellington Street
Ottawa, Ontario
K1A 0H8

**C. REFERENCE TO THE ARBITRATION CLAUSE OR THE SEPARATE
ARBITRATION AGREEMENT THAT IS INVOKED**

The Claimant invokes Section B of Chapter 11 of the NAFTA, and specifically Articles 1116, 1120 and 1122 of the NAFTA as authority for the arbitration.

**D. REFERENCE TO THE CONTRACT OUT OF OR IN RELATION TO
WHICH THE DISPUTE ARISES**

The dispute is in relation to the Claimant's investment in Canada and the damages that have arisen out of the Government of Canada's breach of its obligations under Chapter 11 of the NAFTA.

**E. THE GENERAL NATURE OF THE CLAIM AND AN INDICATION OF
THE AMOUNT INVOLVED**

Breach of Obligations

The Investor alleges that the Government of Canada has breached, and continues to breach, its obligations under Chapter 11 of the NAFTA, including, but not limited to:

- (i) Article 1102 - National Treatment;
- (ii) Article 1110 - Expropriation and Compensation; and
- (iii) Article 1106 - Performance Requirements.

The relevant portions of the NAFTA include:

Article 1102: National Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

Article 1110: Expropriation and Compensation

1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:
 - (a) for a public purpose;
 - (b) on a non-discriminatory basis;
 - (c) in accordance with due process of law and Article 1105(1); and
 - (d) on payment of compensation in accordance with paragraphs 2 through 6.
2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.
3. Compensation shall be paid without delay and be fully realizable.

Article 1106: Performance Requirements

1. No Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory:
 - (b) to achieve a given level or percentage of domestic content;
 - (c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory . . .
6. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in paragraph 1(b) or (c) or 3(a) or (b) shall be construed to prevent any Party from adopting or maintaining measures, including environmental measures:
 - (a) necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;
 - (b) necessary to protect human, animal or plant life or health; or
 - (c) necessary for the conservation of living or non-living exhaustible natural resources.

Introduction

Ethyl Corporation sells the chemical methylcyclopentadienyl manganese tricarbonyl ("MMT") for use in Canada through its wholly-owned subsidiary Ethyl Canada Inc. MMT is a fuel additive that increases the level of octane in fuels and is only sold by Ethyl Canada in Canada. Various groups have alleged that MMT harms the diagnostic systems on automobiles or that MMT is a risk to human health. Health Canada has concluded that MMT does not pose a threat to human health and no independent studies have concluded that MMT harms automobile diagnostic systems.

In the absence of proof of health or environmental concerns, the Government of Canada has introduced legislation, twice, to prohibit the importation and interprovincial trade of MMT. The Canadian legislation will not ban MMT completely, but will make foreign-made MMT inaccessible to consumers in Canada.

The Government of Canada's measures to remove MMT from Canadian gasoline has harmed Ethyl Corporation and the value of its Canadian investment, Ethyl Canada. These arbitrary and discriminatory measures violate at least three provisions of the NAFTA: national treatment, performance requirements and expropriation. As a result of these violations of its NAFTA Investment Chapter obligations, the Government of Canada is obligated to compensate Ethyl Corporation.

Procedural History of the Dispute

On September 10, 1996, Ethyl Corporation served the Government of Canada with a Notice of Intent to Submit a Claim to Arbitration pursuant to NAFTA Article 1118 (a copy of which is appended to Schedule 1 to this document). Also on September 10, 1996, Ethyl wrote to the Government of Canada and requested a meeting in an attempt to settle the claim through consultation or negotiation (a copy of which is included in Schedule 2 to this document). On November 8, 1996, the Government of Canada agreed to meet with Ethyl and its legal counsel on November 12, 1996 (a copy of which is included in Schedule 2 to this document).

On November 5, 1996, counsel for Ethyl wrote to the Government of Canada to confirm that the parties were meeting in an attempt to settle the outstanding issues in dispute giving rise to this Claim (a copy of which is included in Schedule 2 to this document). In correspondence sent on the day of the consultation, the Government of Canada refused to term these meetings a consultation (a copy of which is included in Schedule 2 to this document). These meetings took place in Ottawa on November 12, 1996 and the Investor submits that it has fulfilled its obligations under Article 1118 of the NAFTA and that the Government of Canada has waived any right to call for further and subsequent consultations.

The Facts

1. The Claimant, Ethyl Corporation, is an American corporation incorporated under the laws of the State of Virginia, with its head office in Richmond, Virginia. Ethyl Corporation is the sole shareholder of Ethyl Canada Inc. ("Ethyl Canada"), a corporation incorporated under the laws of Ontario, with its head office in Mississauga, Ontario. Ethyl Canada owns and maintains a processing facility for its MMT operations in Corunna, Ontario. Ethyl Canada is a distinguished corporate citizen which is an active participant in the Corunna, Ontario community.
2. Ethyl Canada is the sole importer into Canada, and the sole distributor across Canada, of methylcyclopentadienyl manganese tricarbonyl ("MMT"). MMT is a fuel additive designed to increase the octane level of unleaded gasoline. Ethyl Canada purchases all of its supply of MMT from Ethyl Corporation directly or through its wholly-owned subsidiary, Ethyl Petroleum Additives Inc.
3. Ethyl Corporation makes MMT in co-operation with Albemarle Corporation, an independent corporation incorporated under the laws of the State of Virginia. Pursuant to the terms of an MMT license and supply agreement, Ethyl purchases all of the major raw materials required to make MMT and supplies these materials to Albemarle Corporation. Albemarle processes the material supplied by Ethyl and manufactures MMT.
4. Ethyl Corporation takes the finished product and sells it to Ethyl Canada which imports the additive into Canada in a concentrated form. Once in Canada, Ethyl Canada processes MMT in its blending facility in Corunna, Ontario. After the MMT has been processed, Ethyl Canada sells the MMT to petroleum refiners across Canada.
5. Ethyl Canada has been carrying on this business since 1978. While Ethyl Canada carries on other economic activity in Canada, the sale of MMT is a substantial part of Ethyl Canada's business.
6. Beginning in 1993 and continuing to date, various automobile manufacturers in Canada have suggested that MMT damages emission control monitoring systems in automobiles. On November 30, 1994, the United States Environmental Protection Agency concluded that MMT does not harm emission control systems in automobiles.
7. MMT does not pose a threat to either the environment or to human health and welfare. In fact, Health Canada has taken the position that MMT in gasoline does not represent an added health risk to the Canadian population. Not being a threat to the environment, the Government of Canada could not prohibit MMT under the *Canadian Environmental Protection Act*, R.S.C. 1985 (4th Supp.), c.16. Not being a threat to human health or welfare, the Government of Canada could not prohibit MMT through any of its health legislation.

8. In December 1994, the then Canadian Minister of the Environment, the Honourable Sheila Copps, M.P., announced that the Government of Canada would remove MMT from use in Canada. To satisfy the requests of the automobile industry, the Government of Canada attempted to prohibit MMT by exercising its regulatory power over international and interprovincial trade. On May 19, 1995, the Government of Canada introduced Bill C-94, *An Act to regulate interprovincial trade in and the importation for commercial purposes of certain manganese-based substances* (a copy of which is appended as Schedule 3 to this document).

9. Bill C-94 failed to pass through the House of Commons when the Parliamentary session ended in January 1996. However, on April 22, 1996, the Government of Canada reintroduced this measure to Parliament directly to Third Reading as Bill C-29 (a copy of which is appended as Schedule 3 to this document). Bill C-29 prevents the importation and interprovincial trade of certain manganese-based substances. The constraining effect of Bill C-29 is contained in section 4, which states:

No person shall engage in interprovincial trade in or import for a commercial purpose a controlled substance except under an authorization referred to in section 5.

The controlled substances referred to in section 4 are listed in a schedule to the bill. At present, the only substance listed in the schedule to Bill C-29 is MMT. Bill C-29 provides that authorization to import MMT may be obtained when the substance will not be used in unleaded gasoline; that is, in fact, a principal use of MMT. MMT is also used by Ethyl Corporation in other fuel products. Under Bill C-29, such other uses would be prohibited unless special ministerial permission were obtained.

10. At the time of introduction of Bill C-29, the Minister of the Environment, the Honourable Sergio Marchi, M.P., publicly stated that the impact of MMT on car emissions systems was such as to pose a threat to human health and welfare:

The bottom line for me, as Minister of the Environment, is the potential negative effect on the health of Canadians caused by possible interference of MMT on automobile computer systems which monitor tailpipe emissions.¹

Due to the Government's measures including the introduction of Bills C-94 and C-29, and the making of other statements by Ministers of the Crown, several public health and environmental interest groups began voicing disapproval over the continued use of MMT in gasoline. The Government's statements created public distrust towards MMT.

¹ Environment Canada News Release, Ottawa - April 18, 1996.

11. While the intent behind Bill C-29 is purportedly to protect human health, Health Canada concluded in 1994 that:

all analysis indicates that the combustion products of MMT in gasoline do not represent an added health risk to the Canadian population.²

Health Canada has never retreated from, nor amended, this position.

12. In 1978, the U.S. Environmental Protection Agency (the "E.P.A.") denied permission to use MMT as an unleaded gasoline additive in the United States. In April of 1995, the U.S. Court of Appeals ruled that the E.P.A. had unlawfully denied Ethyl's request for approval for such use and instructed the E.P.A. to grant such approval forthwith. Since December 1995, MMT was permitted for use in unleaded gasoline in the U.S.
13. The trade inconsistency of Bill C-29 and the absence of any proof of any negative medical effects of MMT has been recognized by Canada's Minister of International Trade. In a letter to Canada's Minister of the Environment at a time when it was proposed that Bill C-29 be introduced, the Minister of International Trade wrote:

An import prohibition on MMT would be inconsistent with Canada's obligations under the WTO and the NAFTA: (1) it would constitute an impermissible prohibition on imports, particularly if domestic production, sale or use is not similarly prohibited; and (2) it could not be justified on health or environmental grounds, given current scientific evidence.³

NAFTA Obligations Breached

National Treatment

14. NAFTA Article 1102 sets out the NAFTA's national treatment obligation for investment. Under Article 1102(2) the investments of investors of other NAFTA Parties must be given the best in-jurisdiction treatment with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments. When read substantively, the national treatment obligation ensures that all companies, whether domestic or foreign, are treated equally and without discrimination.

² *Risk Assessment for the Combustion Products of Methylcyclopentadienyl Manganese Tricarbonyl (MMT) in Gasoline.* Environmental Health Directorate, Health Canada, December 6, 1994 at 69.

³ Letter of the Hon. A. Eggleton to the Hon. S. Marchi (23 February 1996). The full text of this letter is appended in Schedule 4 of this document.

15. The NAFTA national treatment obligation is similar in nature to the national treatment obligation in the GATT. The GATT obligation only deals with trade in goods while the NAFTA expands the national treatment obligation to all investors – whether they provide goods or engage in other economic activity.
16. The meaning of the GATT national treatment obligation has been clarified by a number of GATT Panels. The GATT has interpreted the national treatment obligation to mean that there cannot be any distinguishing between products based on territoriality.
17. In the 1989 Panel Report on *Section 337 of the Tariff Act of 1930*, the panel held that there are situations where treating all equally may well result in less favourable treatment for a foreigner. The panel stated:

[I]t also has to be recognised that there may be cases where application of formally identical legal provisions would in practice accord less favourable treatment to imported products and a contracting party might thus have to apply different legal provisions to imported products to ensure that the treatment accorded them is in fact no less favourable. [...] The words "treatment no less favourable" in paragraph 4 [of GATT Article III] call for effective equality of opportunities for imported products in respect of the application of laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products. This clearly sets a minimum permissible standard.⁴

Discrimination

18. When preparing the legislation, the Government of Canada was well aware that Ethyl Corporation was the only company to import MMT into Canada. In a background note prepared on July 14, 1993, Environment Canada noted that Ethyl Corporation was the sole producer of MMT. It was clear that a measure to block the importation of MMT would discriminate against the existing Canadian market participant which was the investment of an American Investor.⁵
19. There is no reasonable or plausible explanation why domestically produced MMT is permitted for sale in Canada while imported MMT is not. The Canadian measure would give an unfair marketing and promotion advantage to Canadian investors based in Canada over non-Canadian investors selling the same product, such as Ethyl Corporation.

⁴ *United States - Section 337 of the Tariff Act of 1930* (1989), GATT Doc. L/6439, 36 B.I.S.D. (1988-1989) 345 at 5.11.

⁵ C. Prakash, *Background Note - Use of MMT in Gasoline* (14 July 1993).

20. To violate the national treatment obligation, it is not necessary to prove that discrimination has actually occurred, only that it may occur since the requirement to provide equality of competitive opportunities extends to potential discrimination.⁶
21. Bill C-29 constitutes disguised discrimination, aimed at Ethyl Corporation, and its investment, Ethyl Canada. This measure constitutes a violation of the Government of Canada's national treatment obligation to NAFTA investors as set out in Article 1102.

Arbitrariness

22. The intention to ban the importation and interprovincial trade in MMT is a completely arbitrary measure. On the introduction of Bill C-94, the Minister of the Environment, Sheila Copps M.P., acknowledged that Bill C-94 may not remove MMT from use in gasoline. MMT may still be made and used locally. The Minister was asked:
- Q: You've just banned the import in trade, what's to prevent Ethanol [Ethyl] Canada from simply building an MMT plant in Ontario?*
- A: There is nothing preventing them from building a plant domestically.⁷*
23. There would be no difference in nature and kind between MMT produced and used in a Canadian province and MMT imported for use in Canada. All that Bill C-94, and its successor C-29, prohibits is the sale of foreign-made MMT in Canada. This is a completely arbitrary measure aimed at harming Ethyl Corporation and favouring products manufactured in Canada.

Canada Has Taken No Reservations for National Treatment

24. Under NAFTA Article 1108, the NAFTA Parties were able to list reservations to some of the obligations in the NAFTA Investment Chapter. The Government of Canada has not taken any reservations in Annex I or II that would justify the taking of this measure in contravention of Article 1102. Allowing a company to produce and sell MMT within each province while denying the importation of the same product is a denial of national treatment. This measure clearly violates Canada's obligations under NAFTA.

⁶ *Payments and Subsidies Paid to Processors and Producers of Oilseeds and Related Animal-Feed Proteins* (1990), GATT Doc. L/6627, 37 B.I.S.D. (1989-1990) 86; *Measures Affecting Alcoholic and Malt Beverages* (1992), GATT Doc. DS23/R, 39 B.I.S.D. (1991-1992) 206; and *Restrictions on Importation of and Internal Taxes on Cigarettes* (1990), GATT Doc. DS10/R, 37 B.I.S.D. (1989-1990) 200.

⁷ Deputy Prime Minister and Minister of the Environment, the Hon. Sheila Copps, Statement to the Press (19 May 1995) at 5.

Expropriation

25. A fundamental obligation contained in the NAFTA Investment Chapter relates to expropriation. This obligation is contained in Article 1110 of the NAFTA.
26. The NAFTA does not define the term expropriation but it is clear that it is designed to protect against direct and indirect measures by extending its coverage to "measures tantamount to expropriation." Under international law, expropriation refers to the act by which governmental authority is used to deny some benefit of property. This denial can be actual or constructive.
27. As stated in §712 of the American Law Institute's *Restatement (Third) of the Foreign Relations Law of the United States* (1986):
- A state is responsible under international law for injury resulting from:*
- (3) *other arbitrary or discriminatory acts or omissions by the state that impair property or other economic interests of a national of another state.*
28. As stated in Comment (f) and (i) to §712:
- Discrimination implies unreasonable distinction. Takings that invidiously single out property of persons of a particular nationality would be unreasonable. [...] [E]conomic injuries that fall within Subsection (3) are generally unlawful because they involve discrimination or are otherwise arbitrary.*
29. Whether a measure is tantamount to nationalization or expropriation has been previously considered in the context of Bilateral Investment Treaties ("BITs"), which are substantially similar to the NAFTA's investment protection provisions:
- In determining whether a taking constitutes an "indirect expropriation" it is particularly important to examine the effect that such taking may have had on the investor's rights. Where the effect is similar to what might have occurred under an outright expropriation, the investor would in all likelihood be covered under most BIT provisions.⁸*
30. In the *Starrett Housing* case, the Iran-U.S. Claims Tribunal found that:
- [I]t is recognized in international law that measures taken by a State can interfere with property rights to such an extent that these rights are rendered so useless that they must be deemed to have been expropriated, even though the State does not purport to have*

⁸ R. Dolzer & M. Stevens, *Bilateral Investment Treaties* (The Hague: Martinus Nijhoff, 1995) c. 4 at 100.

*expropriated them and the legal title to the property formally remains with the original owner.*⁹

31. The *Restatement (Third) of the Foreign Relations Law of the United States* (1986) provides, in commentary (g) of §712, that restrictions on the taking by a state of the property of a national of another state apply:

... not only to avowed expropriations in which the government formally takes title to property, but also to other actions of the government that have the effect of "taking" the property, in whole or in large part, outright or in stages ("creeping expropriation"). A state is responsible as for an expropriation of property under Subsection (1) when it subjects alien property to taxation, regulation, or other action that is confiscatory, or that prevents, unreasonably interferes with, or unduly delays, effective enjoyment of an alien's property or its removal from the state's territory.

32. An expropriation therefore exists whenever there is a substantial and unreasonable interference with the enjoyment of a property right.
33. International law and the NAFTA both impose standards on the treatment of those whose property has been expropriated. Article 1110 of the NAFTA does not prevent governmental regulatory actions. It requires governments to compensate investors for interference with their property rights as set out in the NAFTA.

The Expropriation of Ethyl Corporation's Enterprise, Ethyl Canada

34. It is clear that the Government of Canada knew that Bills C-94 and C-29 would interfere with Ethyl Corporation's operations. In a background note prepared on July 14, 1993, Environment Canada officials noted that Ethyl Corporation was the sole producer of MMT.¹⁰
35. On February 24, 1995, Industry Canada confirmed to Environment Canada that the government measure would cause a substantial loss of sales revenues. The note speculated that Ethyl Corporation might be forced to close its operations in Canada. The Industry Canada document states:

The sale of MMT represents some 50% of Ethyl Canada's total sales revenue. Loss of this business would result in a loss of a few tens of millions of dollars per year. The Corunna plant employs approximately 40 people. [. . .] The loss of 50% of sales

⁹ *Starrett Housing Corp. v. Iran* (1983), 4 Iran-U.S. C.T.R. 122 at 154.

¹⁰ C. Prakash, *Background Note - Use of MMT in Gasoline* (14 July 1993).

*revenues is a major loss and could cause the parent company to re-evaluate maintaining a Canadian operation.*¹¹

36. In his letter of February 23, 1996 to the Minister of the Environment, Canada's Minister of International Trade pointed out that Canada's proposed legislation could constitute a measure tantamount to expropriation. Minister Eggleton's letter also indicates that the Government of Canada knew that its import prohibition (Bills C-94 and C-29) could be inconsistent with Canada's NAFTA obligations, including NAFTA's investment obligations.¹²
37. The Government of Canada's actions unreasonably interfere with the effective enjoyment of Ethyl Canada's property. This constitutes a measure tantamount to expropriation under the NAFTA.

Canada Can Take No Reservations for Expropriation

38. The NAFTA did not permit its Parties to make any reservations to the expropriation obligations contained in Article 1110.

Performance Requirements

39. NAFTA Article 1106(1) prohibits a number of specific governmental activities collectively referred to as performance requirements. Under Article 1106(1), a Party may not impose or enforce a "requirement, commitment or undertaking" in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor. This general prohibition is further defined in subparagraphs (1)(b) and (1)(c).
40. Under subparagraph (1)(b), a NAFTA Party may not require investors to include in their products or services any amount of goods or services that originate within the Party.
41. Under subparagraph (1)(c), Parties may not require investors to give any preferential treatment to any products or services made domestically. Investors cannot be required to acquire or use goods or services that originate within a Party.

¹¹ Memorandum from D. Head of Industry Canada to F. Vena of Environment Canada (24 February 1995).

¹² Letter of the Hon. A. Eggleton to the Hon. S. Marchi (23 February 1996).

The Requirement to Achieve a Level of Domestic Content

42. The Government of Canada has chosen to remove MMT from the market in a peculiar fashion. It has not banned the use of MMT in unleaded gasoline explicitly or directly; rather, the Government of Canada seeks to prevent its importation and interprovincial trade. A domestic manufacturer, if there were any, could manufacture and distribute MMT for use in unleaded gasoline entirely within a province and not violate Bill C-29.
43. If Ethyl Corporation wanted to maintain a presence in the Canadian market, it would be required to build manufacturing and blending facilities in each province and territory in Canada. Bill C-29 would require MMT sold in Canada to have 100% Canadian content. Bill C-29 violates Article 1106(1)(b), which prohibits government measures that require investors to include in their products or services any amount of goods or services that originate within the Party.
44. As reported in Hansard of October 10, 1996, during the debate of the Third Reading of Bill C-29 before the Canadian House of Commons, the Parliamentary Secretary to the Minister of the Environment explicitly enunciated the Canadian Government's desire to use the MMT ban to foster domestic growth. She stated:

When we are talking about banning MMT and replacing it, we are talking about a variety of substances being used in ways that all parts of this country can benefit instead of giving all of the money to an American firm.¹³

The Requirement to Purchase Domestic Goods or Services

45. Ethyl Canada is in the business of supplying Canadian refineries with MMT. Ethyl Canada obtains all of its supply of MMT from Ethyl Corporation in the United States. If Ethyl Canada wanted to stay in the MMT supply business, it would have to purchase all of the MMT supply from Canadian producers in each province. This is a requirement to purchase domestic goods or services in contravention of Article 1106(1)(c).

The Performance Requirement Exception

46. Article 1106(6) allows a Party to maintain a performance requirement if they meet certain criteria. For the exception to apply, all of the criteria must be met. These criteria are that the measure must be:

¹³ *House of Commons Debates* (10 October 1996).

- i. not applied in an arbitrary manner;
 - ii. not applied in an unjustified manner;
 - iii. not a disguised restriction on international trade or investment; and
 - iv. (a) necessary to protect human, animal or plant life or health; or
(b) necessary for the conservation of living or non-living exhaustible natural resources.
47. The prohibition on importation and interprovincial trade is an arbitrary means of reducing MMT in Canada as it does not necessarily remove MMT from the Canadian marketplace.
48. Bill C-29 is unjustified since there is no consensus of scientific opinion on the effects of MMT, both in terms of its effects on health and its effects on automobile on-board diagnostic systems.
49. Bill C-29 is a disguised restriction on investment since it does not explicitly require the relocation of manufacturing facilities in Canada, but it does effectively so require if Ethyl Corporation is to stay in the MMT business.

Necessary to Protect Human Life or Health

50. The health consequences of MMT are in dispute. Health Canada has concluded that the simple use of MMT in gasoline does not pose a threat to human health. Several other studies have also come to similar conclusions.
51. The Minister of the Environment has stated that the threat to health exists in the possibility that MMT causes the malfunctioning of on-board diagnostics in automobiles. The reasoning is that if the on-board diagnostics do not function properly, automobile owners will not know when their cars are emitting too much exhaust and this will lead to an increase in exhaust emissions. However, the science surrounding this point is not only conflicting but contradictory. The lack of any clear scientific evidence throws into doubt whether Bill C-29 is necessary to protect human life or health.
52. GATT jurisprudence has concluded that for a measure to be necessary, it must be the least trade restrictive measure possible.¹⁴ If the Government of Canada wanted to remove MMT from the marketplace, it should have banned it outright. However, Bill C-29 only prohibits the importation of MMT and effectively gives a benefit to domestic producers. Since there is a less trade restrictive measure possible, Bill C-29 fails to meet the criterion that it be *necessary to protect human life or health*.

¹⁴ *Restrictions on Importation of and Internal Taxes on Cigarettes* (1990), GATT Doc. DS10/R, 37 B.I.S.D. (1989-1990) 200.

Necessary for the Conservation of Living or Non-Living Exhaustible Natural Resources

53. Recently, a WTO Panel has concluded that clean air is an exhaustible natural resource.¹⁵ The WTO Appellate Body in *Standards for Reformulated and Conventional Gasoline* held that the Panel had erred in maintaining a high standard for the phrase “relating to.” The Appellate Body lowered the standard by concluding, in part, that the threshold must be lower than the *necessary* threshold found in other places of the GATT/WTO. In comparison, the NAFTA uses the word “necessary.” This would mean that a high threshold should be maintained in the interpretation of the term “necessary.” For the same reasons, since Bill C-29 is not the least trade-restrictive measure possible, it fails to meet the “necessary for the conservation of living or non-living exhaustible natural resources” criterion.

Canada Has Taken No Reservations for Performance Requirements

54. NAFTA Article 1108 allows the NAFTA Parties to list reservations to some of the obligations in the NAFTA Investment Chapter. It is important to note that the Government of Canada has not taken any reservations in Annex I or II that would justify the taking of this measure in contravention of Article 1106. The Canadian government is, therefore, obligated under its NAFTA obligations to remove performance requirements and is prohibited from imposing them.

Harm to Ethyl Corporation

55. Media attention has focussed on the Government of Canada’s contention that MMT is harmful to the environment. The Government’s repeated assertion of these unfounded claims has resulted in public fear and uncertainty regarding MMT. In the media reports regarding this issue, Ethyl Corporation and Ethyl Canada have been identified as the only manufacturers and distributors of MMT. As such, Ethyl Corporation and Ethyl Canada have become known as the only suppliers of a purportedly harmful substance. This unfounded negative commentary has substantially interfered with the corporate reputation, image and goodwill associated with Ethyl Corporation and Ethyl Canada and the products they sell.
56. This animosity toward MMT was fuelled by the Minister of the Environment when on September 16, 1996, he stated in an article in a major Canadian newspaper:

We have regulations to help protect the air we breathe and the water we drink. There is no place for misguided political ideology in the pursuit of our children's health. That's a

¹⁵ *United States - Standards for Reformulated and Conventional Gasoline* (1996), WTO Doc. WT/DS2/R, 35 I.L.M. 274 at 6.37. This view was accepted by the WTO Appellate Body in *United States - Standards for Reformulated and Conventional Gasoline* (1996), WTO Doc. WT/DS2/9, 35 I.L.M. 603.

*driving force behind the government of Canada's push to have third and final reading this fall of legislation banning the gasoline additive MMT.*¹⁶

This article, written by the Minister, increased the investor's damage. The Minister has not retracted nor clarified his statement.

57. From the winter of 1995 onwards, there have been a number of statements and actions made as part of the official duties of senior government officials. These statements have resulted in harm to Ethyl Corporation and Ethyl Canada. The Canadian actions include:

- Public Statements by the Deputy Prime Minister of Canada on February 17, 1995.
- The introduction of Bill C-94 into the House of Commons on May 19, 1995.
- Statements by the Deputy Prime Minister to Parliament on May 19, 1995.
- Public Statements by the Deputy Prime Minister of Canada on May 19, 1995.
- An article published in the *Ottawa Citizen* newspaper written by the Hon. Sergio Marchi in September 1996.
- Statements by the Parliamentary Secretary to the Minister of the Environment, in Parliament on October 10, 1996.
- The introduction of Bill C-29 by the House of Commons on an accelerated basis on April 22, 1996.
- The passage of Bill C-29 by the House of Commons on December 2, 1996.
- The introduction of Bill C-29 in the Canadian Senate.
- The passage of 2nd reading of Bill C-29 in the Canadian Senate on Dec. 16, 1996.
- Final passage of Bill C-29 in the Canadian Senate on April 10, 1997.

58. In testimony before the Standing Senate Committee on the Environment, Energy and Natural Resources on February 4, 1997, the Assistant Deputy Minister at Environment Canada responsible for this legislation stated that Bill C-29 reflected the policy of the Government of Canada. In response to questioning, he stated:

*This is a government bill, senator. This is not an Environment Canada bill. If I can speak to process for a moment, any policy, regulatory initiative or piece of legislation goes through a rather excruciating process in government before we get it on to the Order Paper. Everyone in this town has a kick at this cat. Every conceivable aspect of the policy is looked at, whether it is economics, trade, jobs, unity or the environment. To get anything on to the Order Paper requires a superhuman effort. This bill required a superhuman effort, as other bills do. It is a government bill, not an Environment Canada bill. I want to make that extremely clear.*¹⁷

¹⁶ S. Marchi, "Clear-cutting of regulations perilous" *The [Ottawa] Citizen* (16 September 1996).

¹⁷ Tony Clark, Assistant Deputy Minister, before the Standing Senate Committee on the Environment, Energy and Natural Resources: *Debates of the Senate* (4 February 1997).

59. These government measures have resulted in harm to Ethyl Corporation's property -- most notably its substantial goodwill regarding the use of MMT. The damage to the commercial reputations of Ethyl Corporation and Ethyl Canada by the defamatory and reckless statements of Canadian officials constitutes a measure tantamount to the expropriation of the goodwill of Ethyl Corporation and Ethyl Canada.
60. Ethyl Corporation operates globally and its goodwill has value on a worldwide basis. The defamatory statements and reckless behaviour of the Government of Canada have adversely affected the company's goodwill both inside and outside Canada.
61. Taken in their entirety, the actions of the Government of Canada indicate a systemic practice by the Canadian government to discriminate against American MMT manufacturers and to advantage domestic producers.
62. Proclamation of Bill C-29 into law by the Government of Canada will constitute a further act of expropriation continuing the harm to the Investor.
63. The definition of the term "investment" in Article 1139 establishes that government measures that harm an investor's intangible property can constitute a measure tantamount to expropriation. The term "measure" as defined by Article 201 includes "any law, regulation, procedure, requirement or practice." The introduction of the legislation, its subsequent passage and the recurring unsubstantiated statements made by officials of the Government of Canada, including the Environment Minister, against the safety and environmental soundness of MMT constitute such a measure.
64. NAFTA Article 1110 (2) specifies that the fair market value of the expropriated investment must be assessed as it was immediately before the "date of expropriation." This provision attempts to settle a difficult question often posed to courts regarding from what date compensation should be assessed. The NAFTA approach attempts to maximize the value payable to expropriated investors.
65. The term "measure" is defined as meaning "any law, regulation, procedure, requirement or practice." The statements of government ministers and other officials in the context of their official duties constitute a measure as they are practices of the government.
66. In addition to the harmful conduct of Government officials, the passage of Bill C-29 by the Canadian House of Commons on December 2, 1996, is an act of an official body of Canada which has injured Ethyl.

The Impact Bill C-29 Has Had on Ethyl Corporation's International Operations

67. Under Article 1116 of the NAFTA, an investor is entitled to claim for all damage "arising out of" the NAFTA government's breach of its investment obligations to the investor in relation to Canada's breach of its National Treatment obligation.
68. The Government of Canada's measure has affected the ability of the investor to sell its product, MMT, in other jurisdictions. This damage is proximate and arises from the government of Canada's breach of its NAFTA investment obligations. As a result of the Government of Canada's measures, Ethyl Corporation has suffered damage in other countries.
69. In addition, should the Canadian measures continue, Ethyl Corporation will suffer ongoing damages to its goodwill and intellectual property throughout the world.

Losses Suffered By Ethyl Corporation

Ethyl Corporation has suffered or will suffer the following losses:

1. Lost sales and profits since the date of introduction of Bill C-94;
2. Loss of value of its investment in Ethyl Canada;
3. Loss of value in its intellectual property;
4. Loss of value of goodwill in Ethyl Corporation;
5. Loss of world-wide sales due to other countries relying on those measures taken by the Government of Canada which are inconsistent with its NAFTA obligations;
6. The cost of reducing operations in Canada;
7. Fees and expenses incurred to defend itself against allegations made by Canada;
8. Fees and expenses of various professional services incurred to defeat Bills C-94 and C-29; and
9. Tax consequences of the award to maintain the integrity of the award.

F. RELIEF OR REMEDY SOUGHT

The Claimant claims damages in the amount of not less than:

1. US\$250,000,000.00 (TWO HUNDRED AND FIFTY MILLION UNITED STATES DOLLARS) arising out of the Government of Canada's breach of its NAFTA obligations;
2. Costs associated with its efforts to prevent the Government of Canada's breach of its NAFTA obligations;
3. Costs associated with these proceedings, including all professional fees and disbursements;
4. Prejudgement and post-judgement interest at a rate to be fixed by the tribunal; and
5. Such further relief that the tribunal may deem appropriate.

G. ARBITRATORS

Pursuant to Article 1123 of the NAFTA, the number of arbitrators shall be three.

The Claimant nominates Charles N. Brower, President of the American Society of International Law, as its party-appointed arbitrator and it proposes that the arbitration be held in, and that the award be rendered in, either New York City or Washington, DC.

DATE OF ISSUE: April 14, 1997

APPLETON & ASSOCIATES
950 Third Avenue
Suite 1700
New York, NY 10022

Ph: (212) 935-9558 Fax: (212) 371-3215

Barry Appleton
Counsel for the Claimant / Investor

SERVED TO:

GOVERNMENT OF CANADA
Office of the
Deputy Attorney General of Canada
Justice Building
239 Wellington Street
Ottawa, Ontario K1A 0H8

APPLETON & ASSOCIATES

INTERNATIONAL LAWYERS

New York Toronto

**NOTICE OF INTENT TO
SUBMIT A CLAIM TO ARBITRATION
UNDER SECTION B OF CHAPTER 11 OF
THE NORTH AMERICAN FREE TRADE AGREEMENT**

ETHYL CORPORATION

Investor

v.

GOVERNMENT OF CANADA

Party

Pursuant to Articles 1116 and 1119 of the North American Free Trade Agreement, the Investor, **ETHYL CORPORATION**, serves notice of intention to submit a claim to arbitration for breach of the Party's obligations under the North American Free Trade Agreement (NAFTA).

A. NAME AND ADDRESS OF THE DISPUTING INVESTOR

ETHYL CORPORATION
330 South Fourth Street
Richmond, VA
23219

B. BREACH OF OBLIGATIONS

The Investor alleges that the Government of Canada has breached its obligations under:

- (i) Article 1110 - Expropriation and Compensation;
- (ii) Article 1106 - Performance Requirements; and
- (iii) Article 1102 - National Treatment.

The relevant portions of the NAFTA are:

Article 1110: Expropriation and Compensation

1. *No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:*

- (a) *for a public purpose;*
- (b) *on a non-discriminatory basis;*
- (c) *in accordance with due process of law and Article 1105(1); and*
- (d) *on payment of compensation in accordance with paragraphs 2 through 6.*

2. *Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.*

3. *Compensation shall be paid without delay and be fully realizable.*

Article 1106: Performance Requirements

1. *No Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory:*

- (b) *to achieve a given level or percentage of domestic content;*
- (c) *to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory . . .*

Article 1102: National Treatment

1. *Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.*

2. *Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.*

Article 1116: Claim by an Investor of a Party on its own Behalf

1. *An investor of a Party may submit to arbitration under this Section a claim that another Party has breached an obligation under:*

(a) *Section A or Article 1503(2) (State Enterprises), or*

(b) *Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A,*

and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

C. FACTUAL BASIS FOR THE CLAIM AND ISSUES

FACTS

1. The Investor, Ethyl Corporation, is an American corporation incorporated under the laws of the State of Virginia, with its head office in Richmond, Virginia. Ethyl Corporation is the sole shareholder of Ethyl Canada Inc. ("Ethyl Canada"), a corporation incorporated under the laws of Ontario, with its head office in Mississauga, Ontario. Ethyl Canada is a distinguished corporate citizen who is an active participant in the Sarnia, Ontario community.
2. Ethyl Canada is the sole importer into Canada, and the sole distributor across Canada, of methylcyclopentadienyl manganese tricarbonyl ("MMT"). MMT is a fuel additive designed to increase the level of octane in unleaded gasoline.

Ethyl Canada purchases all of its supply of MMT from Ethyl Corporation. Pursuant to the terms of an MMT license agreement and a long term supply agreement, Albemarle Corporation manufactures MMT for sale to Ethyl Corporation. Ethyl Corporation sells MMT to Ethyl Canada who imports the additive into Canada in a concentrated form. Once in Canada, Ethyl Canada processes MMT in its manufacturing facility in Corunna, Ontario. After the MMT has been processed, Ethyl Canada sells the MMT to its various purchasers across Canada.

Ethyl Canada has been carrying on this business since 1978. While Ethyl Canada carries on other economic activity in Canada the sale of MMT is a substantial part of Ethyl Canada's business.

Beginning in 1993 and continuing to date, various automobile manufacturers in Canada have suggested, without convincing proof, that MMT was damaging emission control monitoring systems in new automobiles.

In December 1994, the then Canadian Minister of the Environment, the Honourable Sheila Copps, M.P., announced that the Government of Canada would remove MMT from use in Canada.

MMT does not pose a threat to either the environment or to human health and welfare. In fact, Health Canada has taken the position that MMT in gasoline does not represent an added health risk to the Canadian population. Not being a threat to the environment, the Government of Canada could not prohibit MMT under the *Canadian Environmental Protection Act*, R.S.C. 1985 (4th Supp.), c.10. Not being a threat to human health and welfare, the Government of Canada could not prohibit MMT through any of its health legislation.

To satisfy the requests of the automobile industry, the Government of Canada attempted to prohibit MMT by exercising its regulatory power over international and interprovincial trade. On May 19, 1995, the Government of Canada introduced Bill C-94, *An Act to regulate interprovincial trade in and the importation for commercial purposes of certain manganese-based substances*.

Bill C-94 failed to pass through the House of Commons when the Parliamentary session ended in January 1996. However, on April 22, 1996, the Government of Canada reintroduced this measure to Parliament directly to Third Reading as Bill C-29. Bill C-29 prevents the importation and interprovincial trade of certain manganese-based substances. The constraining effect of Bill C-29 hinges upon section 4 which states:

No person shall engage in interprovincial trade in or import for a commercial purpose a controlled substance except under an authorization referred to in section 5.

The controlled substances referred to in section 4 are listed in a schedule to the bill. At present, the only substance listed in the schedule to Bill C-29 is MMT. Bill C-29 provides that authorization to import MMT may be obtained when the substance will not be used in unleaded gasoline; that is in fact the principal use of MMT.

10. At the time of introduction of Bill C-29, the Minister of the Environment, the Honourable Sergio Marchi, M.P., publicly stated that the impact of MMT on car emissions systems was such as to pose a threat to human health and welfare:

*"The bottom line for me, as Minister of the Environment, is the potential negative effect on the health of Canadians caused by possible interference of MMT on automobile computer systems which monitor tailpipe emissions."*¹

Due to the Minister's statements, several public health and environmental interest groups began voicing disapproval over the continued use of MMT in gasoline. The Minister's statement above and other statements created public distrust towards MMT.

11. While the intent behind Bill C-29 is purportedly to protect human health, there is no evidence that MMT harms human health. Indeed, Health Canada concluded in 1994 that:

*all analysis indicates that the combustion products of MMT in gasoline do not represent an added health risk to the Canadian population.*²

Expropriation

Expropriation of Enterprise

12. Once Bill C-29 is proclaimed into force, the Government of Canada will have ended Ethyl Canada's operations of selling MMT for use in unleaded gasoline. This constitutes a substantial interference with Ethyl Corporation's control and enjoyment of its investment in Ethyl Canada. This interference is a measure tantamount to the expropriation of Ethyl Canada.
13. Having expropriated the investment of Ethyl Corporation, the Government of Canada must pay compensation. Compensation must be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place. The valuation criteria include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

¹ Environment Canada News Release, Ottawa - April 18, 1996.

² *Risk Assessment for the Combustion Products of Methylcyclopentadienyl Manganese Tricarbonyl (MMT) in Gasoline.* Environmental Health Directorate, Health Canada, December 6, 1994 at 69.

4. As of the date of filing this Notice of Intent, the Government of Canada has not offered to pay, nor has it paid, any compensation to Ethyl Corporation or to Ethyl Canada on account of its actions regarding MMT.
5. The Government of Canada knew that Bill C-29 would interfere with Ethyl Corporation's operations. In a background note prepared on July 14, 1993, Environment Canada officials stated that Ethyl Corporation was the sole producer of MMT.³ On February 24, 1995, an Industry Canada official confirmed to Environment Canada that the government measure would have the effect of causing a loss of substantial sales revenues. The note speculated that Ethyl Corporation might be forced to close its operations in Canada. The Industry Canada document concludes:

The sale of MMT represents some 50% of Ethyl Canada's total sales revenue. Loss of this business would result in a loss of a few tens of millions of dollars per year. The Corunna plant employs approximately 40 people. [...] The loss of 50% of sales revenues is a major loss and could cause the parent company to re-evaluate maintaining a Canadian operation.⁴

Expropriation of Goodwill

16. A great deal of media interest has surrounded Bill C-29 and its predecessor, Bill C-94. Media attention has focussed on the Government of Canada's contention that MMT is harmful to the environment and that it may contribute to brain damage in humans. With the Government's repeated assertion of these unfounded claims, and the resulting public fear and uncertainty, the product MMT has unjustifiably become known as a substance to be avoided.
17. In the media reports regarding MMT, Ethyl Corporation and Ethyl Canada have been identified as the only manufacturers and distributors of this product. As such, Ethyl Corporation and Ethyl Canada have become identified by the public as the only suppliers of a supposedly harmful substance. This unfounded negative commentary has substantially interfered with the corporate reputations, images and goodwill associated with Ethyl Corporation and Ethyl Canada.
18. The definition of the term "investment" in Article 1139 establishes that government measures that harm an investor's intangible property can constitute a measure tantamount to expropriation.

³ Background Note: Use of MMT in Gasoline. Prepared by Chandra Prakash, July 14, 1993.

⁴ Memorandum from David Head, Industry Canada to Frank Vena, Environment Canada. Subject: Business impact of loss of MMT use. Dated February 24, 1995. (Letter obtained under Access to Information request.)

19. The term "measure" is defined by Article 201 to include "any law, regulation, procedure, requirement or practice." The recurring unsubstantiated statements made by officials of the Government of Canada, including the Ministers of the Environment, against the safety and environmental soundness of MMT, constitutes such a measure.
20. These governmental measures have resulted in harm to Ethyl Corporation's property - most notably its substantial goodwill concerning the use of MMT in unleaded gasoline. The damage to the commercial reputations of Ethyl Corporation and Ethyl Canada by the defamatory and reckless statements of Canadian officials constitutes a measure tantamount to the expropriation of the goodwill of Ethyl Corporation and Ethyl Canada.
21. Ethyl Corporation operates globally and its goodwill has value on a worldwide basis. The defamatory statements and reckless behaviour of the Government of Canada have negatively interfered with the company's goodwill both inside and outside Canada.
22. There is no reservation or exception contained in the NAFTA that would justify the Government of Canada's failure to pay compensation for its expropriation of the goodwill of Ethyl Corporation and Ethyl Canada.

Performance Requirements

23. The Government of Canada has chosen to restrict MMT in a peculiar fashion. It has not banned the use of MMT in unleaded gasoline explicitly or directly; rather, the Government of Canada seeks to prevent its importation and interprovincial trade. A domestic manufacturer, if there were any, could manufacture and distribute MMT for use in unleaded gasoline entirely within a province and not violate Bill C-29. Bill C-29 effectively creates a requirement that MMT be manufactured and distributed in each Canadian province.
24. The Government of Canada's measure was introduced to provide an incentive for the local production of MMT for use in unleaded gasoline. This measure was applied in a manner inconsistent with the provisions of Article 1106 of the NAFTA and has nullified or impaired benefits accruing to the investor under that provision.

Domestic Production of MMT

25. The Government of Canada's measure was explicitly aimed at advantaging domestically produced MMT for use in unleaded gasoline. The Minister of the Environment specifically addressed the issue of a performance requirement in a press conference on the introduction of Bill C-94. The Minister was asked:

Q: You've just banned the import in trade, what's to prevent Ethanol [Ethyl] Canada from simply building an MMT plant in Ontario?

A: There is nothing preventing them from building a plant domestically.⁵

5. The Government of Canada recognized that Bill C-29 implicitly requires investors to establish facilities within provincial boundaries if those investors wish to continue operating as MMT suppliers in Canada. To be able to engage in commerce across Canada, Bill C-29 requires Ethyl Corporation to establish facilities in each of the provinces and territories in Canada. This local content preference violates Canada's NAFTA obligations.

Preference for Domestic Ethanol

7. The Government of Canada proposes that ethanol be used as a substitute for MMT to increase the octane levels of gasoline. Among the barriers to widespread use of ethanol are its high cost and low quantity levels in Canada. Despite the fact that there is a synergistic environmental benefit to using MMT in combination with ethanol, as long as MMT continues to be a cheaper safe alternative to increase octane levels, gasoline companies will continue to use MMT.
8. While the cost and environmental effectiveness of ethanol remains an unanswered question, the Government of Canada is promoting its use.⁶ Presumably, the reason for this policy preference is that ethanol provides a greater economic benefit to Canada than MMT. MMT is manufactured in the United States and distributed by an American corporation, while ethanol is, and would be, manufactured in Canada by Canadians.
29. The Government of Canada's preference for domestic ethanol production is revealed in a government report. On October 5, 1994, the Liberal Caucus Task Force on Ethanol was submitted to the Minister of the Environment. The resolutions of the Task Force advocate a moratorium on the use of MMT in gasoline to provide a benefit for the domestic production of ethanol. The resolutions of the Task Force state:
1. *That a formal environmental/health risk assessment be conducted on the Neurotoxicity of Manganese and MMT. The assessment should be a shared responsibility of Environment Canada and Health Canada.*
 2. *That Canada move forward to initiate a moratorium on the use of MMT as an octane enhancer in Canadian gasolines.*

⁵ Press Conference clipping provided by MH Media Monitoring Limited. Date May 19, 1995.

⁶ See letter from the Minister of Finance Paul Martin, M.P., to Mr. Donald Ceparis, President, Elgin County Corn Producers, dated November 17, 1994 where the Minister of Finance outlines certain tax incentives for ethanol production and commits his government to the maintenance of these tax incentives through the government's mandate. (Letter obtained through Access to Information requests.)

3. *That Transport Canada and Environment Canada encourage the availability of gasoline with alternative additives, such as ethanol, across Canada.*

4. *The Minister of the Environment shall have the prerogative to set regulations declaring that a certain proportion of the total market of gasoline additives shall consist of renewable fuels (ethanol). The proportion should be based on the availability of domestically produced renewable fuels.*⁷ (Emphasis added)

30. The Task Force report advocates the sole use of domestically produced ethanol. In response to this report, the Minister of the Environment stated on December 21, 1994:

Since the release of your task force's report my Cabinet colleagues and I have met to discuss ways to promote the introduction of ethanol-blended gasoline that will, in turn, encourage the development of ethanol plants. We are still actively pursuing the matter.

Bill C-94 was introduced five months after Minister Copps' letter.

31. It is evident that the Canadian measure was not aimed at stimulating demand for MMT but at switching demand to achieve an increase in local production of alternate octane fuel enhancers (ethanol). A preference for ethanol would result in stimulated domestic production. This measure thus constitutes a local content preference which violates Canada's NAFTA obligations regarding performance requirements. This preference stands in conflict with Article 1106(c) which prohibits government measures that require any preference for domestic goods.
32. Furthermore, Bill C-29 is a violation of Article 1106 in that the prohibition of MMT and the encouragement of ethanol interferes unreasonably with the management, operation and conduct of Ethyl Corporation's business. The encouragement of ethanol as an octane enhancer effectively requires Ethyl Corporation to move into the ethanol manufacturing business if it wishes to maintain its position in the petroleum products industry. This would not be an easy transition since the present distribution system of Ethyl Corporation is not suited for, and cannot be accommodated to, ethanol.
33. The Government of Canada has not taken any reservations in Annex I or II that would justify the taking of this measure in contravention of Article 1106.

⁷ Liberal Caucus Task Force on Ethanol at page 2.

National Treatment

34. The NAFTA guarantees that each party will provide treatment to investors of other NAFTA countries no less favourable than it accords, in like circumstances, to its own investors. When read substantively, the national treatment obligation was intended to ensure that all companies, whether domestic or foreign, were treated equally and without discrimination. On the surface, Bill C-29 purports to treat all equally as the measure applies generally to ban the importation of MMT for use in unleaded gasoline by all.
35. In a background note prepared on July 14, 1993, Environment Canada officials noted that Ethyl Corporation was the sole producer of MMT.⁸ It was clear that a measure to block the importation of MMT for use in unleaded gasoline would discriminate against the existing Canadian market participant, Ethyl Corporation.
36. There is no reasonable nor plausible explanation of why domestically produced MMT is permitted for sale in Canada while imported MMT is not. Simply put, the Canadian measure gives unfair marketing and promotion advantage to a Canadian investment over an American investment selling the same product. Thus, Bill C-29 constitutes disguised discrimination, aimed at Ethyl Corporation, and its investment, Ethyl Canada. This measure constitutes a violation of the Government of Canada's national treatment obligation to NAFTA investors as set out in Article 1102.
37. The Government of Canada has not taken any reservations in Annex I or II that would justify the taking of this measure in contravention of Article 1102.

ISSUES

1. Has the Government of Canada taken measures inconsistent with its obligations under Article 1110 of the NAFTA?
2. Has the Government of Canada taken measures inconsistent with its obligations under Article 1106 of the NAFTA?
3. Has the Government of Canada taken measures inconsistent with its obligations under Article 1102 of the NAFTA?
4. If the answer to any of issues 1, 2, or 3 is yes, on what date did the Government of Canada take actions which were inconsistent with its obligations under the NAFTA?
5. If the answer to any of issues 1, 2, or 3 is yes, should compensation be paid to Ethyl Corporation due to the Government of Canada's inconsistency with its NAFTA obligations?

⁸ Background Note: Use of MMT in Gasoline. Prepared by Chandra Prakash, July 14, 1993.

6. If the answer to issue 5 is yes, what is the quantum of the compensation to be paid?

D. RELIEF SOUGHT AND DAMAGES CLAIMED

The Investor claims damages for the following:

1. Damages in the amount of US\$201,000,000 (TWO HUNDRED AND ONE MILLION DOLLARS) arising out of the Government of Canada's breach of its NAFTA obligations;
2. Costs associated with its efforts to prevent the Government of Canada's breach of its NAFTA obligations;
3. Costs associated with these proceedings, including all professional fees and disbursements;
4. Prejudgement and post-judgement interest at a rate to be fixed by the tribunal; and
5. Such further relief that this tribunal may deem appropriate.

DATE OF ISSUE: September 10, 1996

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BARRY APPLETON
Counsel for the Investor and Enterprise

SERVED TO:

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Attorney General of Canada
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239 Wellington Street
Ottawa, Ontario
K1A 0H8

APPLETON & ASSOCIATES

INTERNATIONAL LAWYERS

New York Toronto

September 10, 1996

By Fax

Jonathan Fried, Esq.
NAFTA Co-ordinator,
Department of External Affairs and International Trade
Wester B. Pearson Building
125 Sussex Drive
Ottawa, Ontario
K1A 0G2

Dear Mr Fried:

Re: NAFTA Chapter Investor-State Claim for Ethyl Corporation

I have the pleasure of acting as counsel for Ethyl Corporation, an American juridical national which has an investment in Canada. Earlier today, we served on the office of the Deputy Attorney General of Canada a Notice of Intent to Submit a Claim to Arbitration pursuant to Section B of Chapter 11 of the North American Free Trade Agreement.

As a courtesy, we have provided you with a copy of this notice. The NAFTA provides for a ninety day period for consultations between the disputants before submission of the arbitral claim. We would be pleased to meet with you, or your representative, at a mutually convenient time and place in order to facilitate these consultations.

Yours very truly,

ORIGINAL SIGNED BY

Barry Appleton
Counsel for the Investor, Ethyl Corporation

Enclosure:

125 Sussex Drive
Ottawa, Ontario
K1A 0G2

October 16, 1996

Mr. Barry Appleton
Appleton & Associates
129 Yorkville Avenue
Third Floor
Toronto, Ontario
M5R 1C4

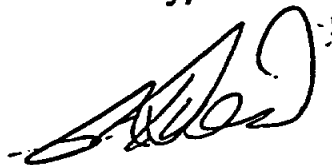
Dear Mr. Appleton:

Thank you for your letter dated September 10, 1996. I appreciate the courtesy you have shown in providing me with a copy of the Notice of Ethyl Corporation's Intent to Submit a Claim under Chapter 11 of NAFTA.

As a result of the recent departmental reorganization, while I continue to be the NAFTA Coordinator, my colleague, John Gero, is the Director General responsible for bilateral and multilateral investment matters.

We note your offer to meet to discuss the matter of Ethyl's intention to submit a claim. Mr. Gero has advised that he would be pleased to do so at a mutually convenient time. You may wish to contact his office directly at (613) 944-2007.

Yours sincerely,



Jonathan T. Fried
Director General
General Trade Policy Bureau

c.c.: John Gero

APPLETON & ASSOCIATES

INTERNATIONAL LAWYERS

New York Toronto

November 5, 1996

By Fax

Mr. John Gero
Director General,
Bilateral and Multilateral Investment
Dept. of Foreign Affairs and International Trade
125 Sussex Drive
Ottawa, ON K1A 0G2

Dear Mr Gero:

Re: NAFTA Chapter 11 Notice of Intent
From Ethyl Corporation

I am writing to confirm of the arrangements for the consultation meeting scheduled by our offices for 2 p.m. on Tuesday, November 12th, 1996 regarding the Notice of Intent of Claim brought by Ethyl Corporation under Article 1116 of the North American Free Trade Agreement.

It is important that we make this consultation efficient and productive. To that end we requested that your office provide us with your delegation list in advance of the meeting. In the interests of efficiency and confidentiality, we would request a copy of your delegation list no later than noon on Friday, November 8th.

At this time, the investor's preliminary delegation consists of Christopher Hicks, a Vice President of the Investor, and myself. We would be pleased to provide you with our final delegation list 24 hours in advance of the meeting.

In the absence of clearly defined concepts of privilege in international law, we request that you confirm in advance that our discussions will be privileged and that no transcription or monitoring will take place.

Yours very truly,



Barry Appleton
Managing Partner

cc: C. Hicks, Ethyl Corporation

Department of Foreign Affairs
and International Trade



Ministère des Affaires étrangères
et du Commerce international

Lester B. Pearson Building
125 Sussex Drive
Ottawa, Ontario
K1A 0G2

November 8, 1996

EBD-003

Mr. Barry Appleton
Appleton & Associates
129 Yorkville Avenue, Third Floor
Toronto, Ontario
M5R 1C4

FAX: (416) 966-8800

Dear Mr. Appleton:

Further to your letter dated November 5, 1996, I am pleased to confirm our meeting at the Department of Foreign Affairs and International Trade, Room C7-500, at 2:00 p.m. on Tuesday, November 12, 1996.

As indicated in Jonathan Fried's letter of October 16, we are pleased to respond positively to your request for an informal meeting in order to better understand the claims set out in Ethyl Corporation's Notice of Intent to Submit a Claim under Chapter 11 of the NAFTA. I will be accompanied by colleagues from Foreign Affairs and International Trade, and possibly from other government departments. Since the attendance list remains to be finalised, they will be introduced to you at the meeting.

Yours sincerely,

John Gero
Director General
Trade Policy Bureau II

APPLETON & ASSOCIATES

INTERNATIONAL LAWYERS

New York Toronto

November 8, 1996

By Fax

Mr. John Gero
Director General,
Bilateral and Multilateral Investment
Dept. of Foreign Affairs and International Trade
125 Sussex Drive
Ottawa, ON K1A 0G2

COPY

Dear Mr Gero:

Re: Consultation regarding NAFTA Chapter 11
Notice of Intent from Ethyl Corporation

Thank you for your letter of today's date. I am pleased to be able to reconfirm our meeting for 4:30 pm on Tuesday November 12, 1996 in Ottawa.

Ethyl Corporation wishes to have a full and frank discussion with the government that can swiftly resolve our outstanding concerns. It is difficult to be able to have such a good faith discussion in the absence of litigation privilege.

My letter to you of November 5, 1996 addressed the issue of litigation privilege. Municipal legal systems in Canada and the United States automatically extend this privilege to meetings aimed at settling the issues in contention between the parties. Unfortunately, there is no rule governing this issue in international law.

Your letter of today's date omitted to deal with this important issue. It is important that we are able to agree on this issue before any meeting takes place.

Yours very truly,



Barry Appleton
Managing Partner

cc: C. Hicks, Ethyl Corporation

Sussex Drive
Ottawa, Ontario
K1P 0G2

November 12, 1996

EXT 1507 (12/93)

FACSIMILE / TÉLÉCOPIE

If there is any problem upon receipt of this fax, please call (613) 995-0990
/ a des problèmes à la réception de cette télécopie, prière d'appeler:

Barry Appleton
Appleton & Associates

From/De: Steve Brereton
Investment Trade Policy Division

Ville: Toronto
No./ e télécopie: (416) 966-8801

City/Ville: Ottawa
Fax No./ No de télécopie: (613) 944-0679

Refer to your fax dated November 8, apparently it needs to be clarified that, in our view, your meeting is not a consultation. It is an informal meeting to allow you an opportunity to explain your client's position.

In respect to your claim of "litigation privilege" regarding today's discussion, I can be reached at (613) 995-0990 this morning to discuss what you intend by your use of this term. I suggest you call my office at 10:30.



C-29

Second Session, Thirty-fifth Parliament,
45 Elizabeth II, 1996

THE HOUSE OF COMMONS OF CANADA

BILL C-29

to regulate interprovincial trade in and the
importation for commercial purposes of certain
manganese-based substances

First reading, April 22, 1996

NOTE

Printed pursuant to Order made March 4, 1996, in the same form
as Bill C-94 of the First Session of the Thirty-fifth Parliament,
as amended in committee and/or at the report stage, for the use of
the House of Commons at third reading.

C-29

Deuxième session, trente-cinquième législature,
45 Elizabeth II, 1996

CHAMBRE DES COMMUNES DU CANADA

PROJET DE LOI C-29

Loi régissant le commerce interprovincial et l'importation
à des fins commerciales de certaines substances à base
de manganèse

Première lecture le 22 avril 1996

NOTE

Imprimé, conformément à un ordre adopté le 4 mars 1996, dans
le même état où était le projet de loi C-94 de la première session de
la trente-cinquième législature, tel que modifié en comité et/ou à
l'étape du rapport, à l'usage de la Chambre des communes pour
l'étape de la troisième lecture.

THE HOUSE OF COMMONS OF CANADA

CHAMBRE DES COMMUNES DU CANADA

BILL C-29

PROJET DE LOI C-29

An Act to regulate interprovincial trade in and the importation for commercial purposes of certain manganese-based substances

Loi régissant le commerce interprovincial et l'importation à des fins commerciales de certaines substances à base de manganèse

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

SHORT TITLE

TITRE ABRÉGÉ

1. This Act may be cited as the *Manganese-based Fuel Additives Act*.

1. *Loi sur les additifs à base de manganèse.*

Titre abrégé

INTERPRETATION

DÉFINITIONS

2. In this Act,

2. Les définitions qui suivent s'appliquent à la présente loi.

Définitions

"controlled substance" means a manganese-based substance that is mentioned in the schedule and includes any other substance that contains such a manganese-based substance;

« essence sans plomb » Essence à laquelle aucun plomb n'est ajouté durant la production.

« essence sans plomb »
"unleaded gasoline"

"Minister" means such member of the Queen's Privy Council for Canada as may be designated by order of the Governor in Council as the Minister for the purposes of this Act;

« ministre » Le membre du Conseil privé de la Reine pour le Canada chargé, par décret, de l'application de la présente loi.

« ministre »
"Minister"

"unleaded gasoline" means gasoline to which lead has not been added during the production process.

« substance à usage contrôlé » Substance à base de manganèse mentionnée à l'annexe. Y est assimilée toute autre substance contenant une telle substance.

« substance à usage contrôlé »
"controlled substance"

HER MAJESTY

SA MAJESTÉ

3. This Act is binding on Her Majesty in right of Canada or a province.

3. La présente loi lie Sa Majesté du chef du Canada ou d'une province.

Obligation de Sa Majesté

INTERPROVINCIAL TRADE AND IMPORTATION

COMMERCE INTERPROVINCIAL ET IMPORTATION

4. No person shall engage in interprovincial trade in or import for a commercial purpose a controlled substance except under an authorization referred to in section 5.

4. Il est interdit, sauf en conformité avec l'autorisation prévue à l'article 5, de se livrer au commerce interprovincial ou à l'importation à des fins commerciales d'une substance à usage contrôlé.

Interdiction

SUMMARY

enactment prohibits interprovincial trade in and importation for commercial purpose of certain manganese-based substances that are added to unleaded gasoline. The Minister may authorize interprovincial or importation for a commercial purpose of such a substance if it is to be used for a purpose other than that of being added to unleaded gasoline. Information about those uses must be recorded and reported to the Minister.

SOMMAIRE

Le texte interdit le commerce interprovincial et l'importation à des fins commerciales de certaines substances à base de manganèse lorsque celles-ci sont destinées à être ajoutées à de l'essence sans plomb. Le ministre peut toutefois autoriser de telles activités lorsque les substances visées doivent servir à d'autres usages. Le cas échéant, les détails de ces activités doivent être enregistrés et communiqués au ministre.

Manganese-based Fuel Additives

45 ELIZ. II

Authorization
Minister

5. (1) The Minister may authorize any person to engage in interprovincial trade in or to import for a commercial purpose a controlled substance if the Minister is satisfied

5. (1) Le ministre peut autoriser toute personne à se livrer à une activité visée par l'article 4 s'il est convaincu que la substance à usage contrôlé en cause n'est ni de l'essence sans plomb, ni destinée à être ajoutée à de l'essence sans plomb.

Autorisation

- (a) that the controlled substance is not unleaded gasoline; and
- (b) that the controlled substance will not be added to unleaded gasoline.

5

(2) The Minister may attach to the authorization any condition respecting the controlled substance, the use that may be made of it, the term of the authorization and its renewal and any other condition that the Minister considers appropriate.

(2) Il peut assortir l'autorisation de toute condition qu'il juge indiquée, notamment quant à la substance à usage contrôlé visée, à l'usage qui peut en être fait, à la durée de l'autorisation et à son renouvellement éventuel.

Conditions

6. The Minister may require the applicant for the authorization to post a bond or provide other security, in a form and for an amount fixed by the Minister, to ensure

6. Le ministre peut exiger que la personne qui demande l'autorisation garantisse, au moyen d'un cautionnement ou d'une autre sûreté dont le montant et la forme sont déterminés par lui, l'observation des prescriptions du paragraphe 5(1) et des conditions de l'autorisation.

Garantie

- (a) that the controlled substance is not unleaded gasoline and that the controlled substance will not be added to unleaded gasoline; and
- (b) that the applicant will comply with the conditions of the authorization.

20

7. The Minister may revoke the authorization

7. Le ministre peut retirer l'autorisation soit à la demande ou avec le consentement du titulaire, soit lorsqu'il est convaincu que les prescriptions du paragraphe 5(1) ou les conditions de l'autorisation ne sont plus respectées. Dans ce dernier cas, il peut également réaliser la garantie fournie par le titulaire.

Retrait de l'autorisation

- (a) on the application or with the consent of the holder of the authorization, or
- (b) where the Minister

(i) is no longer satisfied that the controlled substance is not unleaded gasoline,

30

(ii) is no longer satisfied that the controlled substance will not be added to unleaded gasoline, or

35

(iii) is satisfied that the holder has not complied with the conditions of the authorization,

and, where the Minister revokes the authorization under paragraph (b), the Minister may realise on the security provided by the holder.

8. The Governor in Council may make regulations for carrying out the purposes and provisions of sections 5 to 7, including regulations respecting applications for authorizations referred to in section 5 and their consideration by the Minister.

8. Le gouverneur en conseil peut prendre des règlements concernant toute mesure d'application des articles 5 à 7, notamment quant à la demande d'autorisation et à son examen par le ministre.

Règlements

RECORDS

9. (1) Every person who, under an authorization referred to in section 5, engages in interprovincial trade in or imports a controlled substance shall maintain a record respecting the controlled substance in accordance with this section.

(2) A record that is required to be maintained by subsection (1) must contain the following information for each transaction under the authorization, which shall be entered within thirty days after the transaction and signed by the person who maintains the record:

- (a) the name of the controlled substance;
- (b) the place where and the person from whom it was acquired;
- (c) its quantity;
- (d) the use that is made or is to be made of it;
- (e) the place where and the person to whom it is disposed of; and
- (f) the day on which it crossed the boundary of a province or was released in accordance with the *Customs Act*.

(3) A person who is required by this section to maintain a record containing information for a transaction shall maintain the record containing that information in Canada for a period of five years after the end of the calendar year in which the information was entered in the record or, in the case of a corporation, after the end of the financial year of the corporation in which the information was entered in the record.

10. A person who is required to maintain a record by section 9 shall, within sixty days of each transaction under the authorization, file a report with the Minister, in the form prescribed by the Minister, on the information contained in the record.

REGISTRE

9. (1) Quiconque se livre, conformément à l'autorisation prévue à l'article 5, au commerce interprovincial ou à l'importation d'une substance à usage contrôlé doit tenir un registre au sujet de cette substance.

(2) Sont consignés sur le registre sous l'attestation de la personne responsable de celui-ci, dans les trente jours qui suivent chaque opération visée par l'autorisation, les renseignements suivants :

- a) le nom de la substance à usage contrôlé visée;
- b) sa provenance — lieu et source d'approvisionnement;
- c) la quantité visée;
- d) l'usage qui en est fait ou celui auquel elle est destinée;
- e) sa destination — lieu et destinataire;
- f) la date où, selon le cas, elle a franchi la limite d'une province ou a été dédouanée conformément à la *Loi sur les douanes*.

(3) L'intéressé conserve, au Canada, les renseignements consignés sur le registre pendant cinq ans à compter de la fin de l'année civile ou, s'agissant d'une personne morale, de l'exercice où ils ont été enregistrés.

10. Dans les soixante jours suivant chaque opération visée par l'autorisation, l'intéressé transmet au ministre, suivant la forme que détermine celui-ci, une déclaration faisant état des renseignements consignés sur le registre.

Commerce
interprovincial
et importation

Contenu du
registre

Conservation
du registre

Déclaration

POWERS OF THE MINISTER

POUVOIRS DU MINISTRE

11. (1) For the purpose of deciding whether to recommend to the Governor in Council that the name of a manganese-based substance be added to or deleted from the schedule, the Minister may publish in the *Canada Gazette* and in any other manner that the Minister considers appropriate a notice requiring any person described in the notice to provide the Minister with such information and samples referred to in subsection (2) as may be in the possession of that person or to which that person may reasonably be expected to have access.

11. (1) Afin de déterminer s'il y a lieu de recommander au gouverneur en conseil l'adjonction à l'annexe d'une substance à base de manganèse ou encore sa suppression, le ministre peut publier dans la *Gazette du Canada*, ou de toute autre façon qu'il juge indiquée, un avis obligeant toute personne visée par celui-ci à lui communiquer les renseignements et les échantillons mentionnés au paragraphe (2) dont elle dispose ou auxquels elle peut normalement avoir accès.

Avis de demande de renseignements et d'échantillons

(2) A notice may require any information and samples that may assist the Minister to decide whether to recommend to the Governor in Council that the name of a manganese-based substance be added to or deleted from the schedule, including samples of the substance and information on the quantities, uses and composition of the substance.

(2) L'avis peut exiger les renseignements et les échantillons utiles au ministre, notamment des renseignements sur les quantités, les usages et la composition de la substance.

Contenu de l'avis

(3) Every person to whom a notice is directed shall comply with the notice within such time or times as are specified in the notice.

(3) Les destinataires de l'avis sont tenus de s'y conformer dans le délai qui leur est imparti.

Observation de l'avis

(4) Notwithstanding subsection (3), the Minister may, on request in writing from any person to whom a notice is directed, extend the time or times within which the person shall comply with the notice.

(4) Par dérogation au paragraphe (3), le ministre peut, sur demande écrite du destinataire de l'avis, proroger le délai imparti.

Prorogation du délai

ENFORCEMENT

CONTRÔLE D'APPLICATION

Inspectors and Analysts

Inspecteurs et analystes

12. (1) The Minister may designate as an inspector or analyst for the purposes of this Act any person who, in the opinion of the Minister, is qualified to be so designated, either personally or by reason of that person occupying a certain position.

12. (1) Le ministre peut désigner, à titre d'inspecteur ou d'analyste pour l'application de la présente loi, toute personne qu'il estime compétente pour occuper cette fonction, soit personnellement, soit au titre de son appartenance à une catégorie professionnelle.

Désignation

(2) An inspector shall be furnished with a certificate of designation and, on entering any place under this Act, shall produce the certificate on request of the person in charge of the place.

(2) L'inspecteur doit recevoir un certificat attestant sa qualité, qu'il présente, sur demande, au responsable du lieu visité.

Production du certificat

Provisions of the Canadian Environmental Protection Act

Dispositions de la Loi canadienne sur la protection de l'environnement

13. Paragraphs 100(1)(a) and (f), subsections 100(2) to (7) and sections 101 to 107 and 111 of the *Canadian Environmental Protection Act* apply, with such modifications as the circumstances require, in respect of this Act.

13. Les alinéas 100(1)a) et f), les paragraphes 100(2) à (7), ainsi que les articles 101 à 107 et 111 de la *Loi canadienne sur la protection de l'environnement* s'appliquent, avec les adaptations nécessaires, à la présente loi.

Dispositions applicables

OFFENCES AND PUNISHMENT

INFRACTIONS ET PEINES

14. Every person who contravenes section 4 is guilty of an offence and liable

14. Quiconque contrevient à l'article 4 commet une infraction et encourt, sur déclaration de culpabilité :

Commerce interprovincial et importation

(a) on summary conviction, to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding six months, or to both; 10 or

a) par procédure sommaire, une amende 10 maximale de 300 000 \$ et un emprisonnement maximal de six mois, ou l'une de ces peines;

(b) on conviction on indictment, to a fine not exceeding \$1,000,000 or to imprisonment for a term not exceeding three years, or to both. 15

b) par mise en accusation, une amende maximale de 1 000 000 \$ et un emprisonnement maximal de trois ans, ou l'une de ces peines.

15. Every person who knowingly enters false or misleading information in a record required to be maintained by this Act or provides the Minister with false or misleading information, samples or results is guilty of an offence and liable 20

15. Quiconque, sciemment, transmet au ministre des renseignements, échantillons ou résultats faux ou trompeurs ou consigne de tels renseignements sur le registre dont la tenue est exigée par la présente loi commet une infraction et encourt, sur déclaration de culpabilité :

Faux renseignements

(a) on summary conviction, to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding six months, or to both; or 25

a) par procédure sommaire, une amende maximale de 300 000 \$ et un emprisonnement maximal de six mois, ou l'une de ces peines;

(b) on conviction on indictment, to a fine not exceeding \$1,000,000 or to imprisonment for a term not exceeding five years, or to both.

b) par mise en accusation, une amende maximale de 1 000 000 \$ et un emprisonnement maximal de cinq ans, ou l'une de ces peines.

16. Every person who contravenes any provision of this Act, other than section 4 or 15 or a provision referred to in section 13, is guilty of an offence punishable on summary conviction and liable to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding six months, or to both. 30

16. Quiconque contrevient à quelque autre disposition de la présente loi commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de 200 000 \$ et un emprisonnement maximal de six mois, ou l'une de ces peines. 35

Autres infractions

17. (1) In any prosecution of an offence under this Act it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or prosecuted for the offence. 40

17. (1) Dans les poursuites pour infraction à la présente loi, il suffit, pour prouver l'infraction, d'établir qu'elle a été commise par un agent ou un mandataire de l'accusé, que cet agent ou mandataire ait été ou non identifié ou poursuivi. 40

Agents et mandataires

(2) No person shall, by virtue of subsection (1), be found guilty of an offence under section 15 if the person establishes that the offence was committed without the person's knowledge or consent and that he or she exercised all due diligence to prevent its commission.

(3) No person shall be found guilty of an offence under this Act, other than an offence under section 15, if the person establishes that he or she exercised all due diligence to prevent its commission.

18. (1) Where an offender has been convicted of an offence under this Act, in addition to any other punishment that may be imposed under this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order having any or all of the following effects:

(a) prohibiting the offender from doing any act or engaging in any activity that may result in the continuation or repetition of the offence;

(b) directing the offender to take such action as the court considers appropriate to remedy or avoid any harm that results or may result from the commission of the offence;

(c) directing the offender to publish, in any manner that the court considers appropriate, the facts relating to the commission of the offence;

(d) directing the offender to notify, at the offender's own cost and in any manner that the court considers appropriate, any person aggrieved or affected by the offender's conduct of the facts relating to the commission of the offence;

(e) directing the offender to post such bond or pay such amount of money into court as will ensure compliance with any order made pursuant to this section;

(f) directing the offender to submit to the Minister, on application by the Minister made within three years after the date of conviction, such information with respect to the activities of the offender as the court considers appropriate and just in the circumstances;

(2) Toutefois, nul ne peut être déclaré coupable, par application du paragraphe (1), d'une infraction visée à l'article 15 s'il prouve que la perpétration a eu lieu à son insu et qu'il a pris les mesures nécessaires pour l'empêcher.

(3) Nul ne peut être déclaré coupable d'une infraction à la présente loi, autre que celle visée à l'article 15, s'il établit qu'il a exercé toute la diligence convenable pour l'empêcher.

18. (1) En sus de toute peine prévue par la présente loi et compte tenu de la nature de l'infraction ainsi que des circonstances de sa perpétration, le tribunal peut rendre une ordonnance imposant au contrevenant déclaré coupable tout ou partie des obligations suivantes :

a) s'abstenir de tout acte ou toute activité risquant d'entraîner la continuation de l'infraction ou la récidive;

b) prendre les mesures que le tribunal estime justes pour réparer ou éviter des dommages résultant de la perpétration de l'infraction;

c) publier, en la forme déterminée par le tribunal, les faits liés à la perpétration de l'infraction;

d) aviser, à ses frais et selon les modalités déterminées par le tribunal, toute victime des faits liés à la perpétration de l'infraction;

e) donner tel cautionnement ou déposer auprès du tribunal telle somme d'argent en garantie de l'observation d'une ordonnance rendue en vertu du présent article;

f) fournir au ministre, sur demande présentée par celui-ci dans les trois ans suivant la déclaration de culpabilité, les renseignements relatifs à ses activités que le tribunal estime justifiés en l'occurrence;

g) indemniser le ministre, en tout ou en partie, des frais faits par celui-ci pour la réparation ou la prévention des dommages résultant de la perpétration de l'infraction;

h) se conformer aux autres conditions que le tribunal estime justifiées pour assurer sa bonne conduite et empêcher toute récidive.

Disculpation

Disculpation

Ordonnance du tribunal

(g) directing the offender to compensate the Minister, in whole or in part, for the cost of any remedial or preventative action taken by or caused to be taken on behalf of the Minister as a result of the commission of the offence; and

(h) requiring the offender to comply with such other reasonable conditions as the court considers appropriate and just in the circumstances for securing the offender's good conduct and for preventing the offender from repeating the same offence or committing other offences.

(2) Where an offender does not comply with an order made under paragraph (1)(c) directing the publication of the facts relating to the commission of the offence, the Minister may publish the facts in compliance with the order and recover the costs of publication from the offender.

(3) Where the court makes an order under paragraph (1)(g) directing an offender to pay costs or the Minister incurs publication costs under subsection (2), the costs constitute a debt due to Her Majesty in right of Canada and may be recovered as such in any court of competent jurisdiction.

(4) An order made under subsection (1) comes into force on the day on which it is made or on such other day as the court may determine but may not continue in force for more than three years after that day.

19. Sections 117, 118, 122, 126 to 129, 131 to 133 and 135 to 137 of the *Canadian Environmental Protection Act* apply in respect of this Act

(a) as if each reference in any of those sections to section 130 of that Act were a reference to section 18 of this Act; and

(b) with such other modifications as the circumstances require.

(2) En cas de manquement à l'obligation mentionnée à l'alinéa (1)c), le ministre peut procéder à la publication et en recouvrer les frais auprès du contrevenant.

(3) Les frais visés à l'alinéa (1)g) et au paragraphe (2) constituent des créances de Sa Majesté du chef du Canada dont le recouvrement peut être poursuivi à ce titre devant le tribunal compétent.

(4) Toute ordonnance rendue aux termes du paragraphe (1) prend effet soit immédiatement, soit à la date fixée par le tribunal, et elle demeure en vigueur pendant trois ans au plus.

19. Les articles 117, 118, 122, 126 à 129, 131 à 133 et 135 à 137 de la *Loi canadienne sur la protection de l'environnement* s'appliquent à la présente loi, avec les adaptations nécessaires. Notamment, toute mention à ces articles, de l'article 130 de cette loi vaut mention de l'article 18 de la présente loi.

Publication

Créances de Sa Majesté

Prise d'effet

Loi canadienne sur la protection de l'environnement

of
an
vol

Manganese-based Fuel Additives

45 ELIZ II

AMENDMENTS TO THE SCHEDULE

20. The Governor in Council may, by order, amend the schedule by adding or deleting the name of a manganese-based substance.

MODIFICATION DE L'ANNEXE

20. Le gouverneur en conseil peut, par décret, modifier l'annexe par adjonction ou suppression de toute substance à base de manganèse.

Décret

COMING INTO FORCE

21. This Act comes into force sixty days after the day on which it is assented to.

ENTRÉE EN VIGUEUR

21. La présente loi entre en vigueur soixante 5
5 jours après la date de sa sanction.

Entrée en
vigueur

SCHEDULE
(Sections 2, 11 and 20)

CONTROLLED SUBSTANCES

*1*icyclopentadienyl manganese tricarbonyl
*2*hycyclopentadiényl manganèse tricarbonyle

ANNEXE
(articles 2, 11 et 20)

LISTE DES SUBSTANCES À USAGE CONTRÔLÉ

*1*Méthylcyclopentadiényl manganèse tricarbonyle
*2*Methylcyclopentadienyl manganese tricarbonyl

TABLE OF PROVISIONS

AN ACT TO REGULATE INTERPROVINCIAL TRADE IN
AND THE IMPORTATION FOR COMMERCIAL PURPOSES
OF CERTAIN MANGANESE-BASED SUBSTANCES

SHORT TITLE

Short title

INTERPRETATION

Definitions

HER MAJESTY

Binding on Her Majesty

INTERPROVINCIAL TRADE AND IMPORTATION

Prohibition

Authorization by Minister

Security

Revocation

Regulations

RECORDS

Interprovincial trade and importation

Report

POWERS OF THE MINISTER

Notice requiring information and samples

ENFORCEMENT

Inspectors and Analysts

Designation

Provisions of the Canadian Environmental Protection Act

Application of provisions of the Canadian Environmental Protection Act

OFFENCES AND PUNISHMENT

Interprovincial trade and importation

False or misleading information

Other offences

Proof of offence

Orders of court

TABLE ANALYTIQUE

LOI RÉGISSANT LE COMMERCE INTERPROVINCIAL ET
L'IMPORTATION À DES FINS COMMERCIALES DE
CERTAINES SUBSTANCES À BASE DE MANGANÈSE

TITRE ABRÉGÉ

1. Titre abrégé

DÉFINITIONS

2. Définitions

SA MAJESTÉ

3. Obligation de Sa Majesté

COMMERCE INTERPROVINCIAL ET IMPORTATION

4. Interdiction

5. Autorisation

6. Garantie

7. Retrait de l'autorisation

8. Règlements

REGISTRE

9. Commerce interprovincial et importation

10. Déclaration

POUVOIRS DU MINISTRE

11. Avis de demande de renseignements et d'échantillons

CONTRÔLE D'APPLICATION

Inspecteurs et analystes

12. Désignation

Dispositions de la Loi canadienne sur la protection de l'environnement

13. Dispositions applicables

INFRACTIONS ET PEINES

14. Commerce interprovincial et importation

15. Faux renseignements

16. Autres infractions

17. Agents et mandataires

18. Ordonnance du tribunal

Modification of provisions of the *Canadian Environmental Protection Act*

AMENDMENTS TO THE SCHEDULE

Orders of the Governor in Council

COMING INTO FORCE

Coming into force

SCHEDULE

19. *Loi canadienne sur la protection de l'environnement*

MODIFICATION DE L'ANNEXE

20. Décret

ENTRÉE EN VIGUEUR

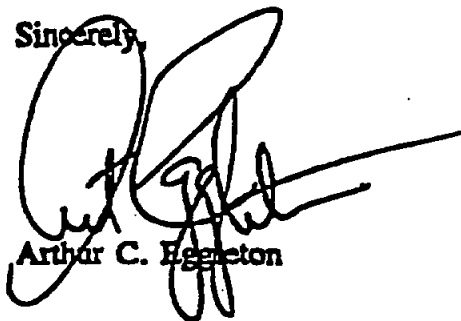
21. Entrée en vigueur

ANNEXE

In view of the Presidential and Congressional elections this year, American politicians are particularly sensitive to any foreign initiative which might injure their domestic industries.

In conclusion, let me stress my department's belief that Bill C-94 should not be re-introduced as it could have many adverse implications for Canadian trade, without compensating environmental benefits.

Sincerely,

A handwritten signature in black ink, appearing to be 'Arthur C. Egerton', written over a printed name. The signature is stylized with a large initial 'A' and a long horizontal stroke extending to the right.

Arthur C. Egerton

