

Ethyl Corporation vs. Canada

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Jason Kim, Amando Franco, Daisy Kong

I. ETHYL CORPORATION VS CANADA

A. DISPUTE: In April 1997, the Canadian Government banned the inter-provincial transport and international import of MMT because of health concerns. Ethyl Corporation, the maker of MMT, contested this ban under NAFTA.

B. CASE FACTS and CLAIMS

1. Canadian Government Argument: Health concerns for its citizens

Manganese

- The danger of inhaling manganese particles from autos burning fuel containing MMT known since 1800s A
- Airborne manganese causes neurological impairments and symptoms similar to Parkinson's disease
- 1990s studies published in public health journal saw “compelling evidence of neuro toxicity associated with low-level occupational exposure” to manganese in the air

2. Ethyl Argument: NAFTA Violation

NAFTA Chapter Eleven

- NAFTA Article 1110: Ethyl argued that NAFTA granted it new rights and privileges *vis-a-vis* the Canadian government and that the Canadian MMT ban amounted to a NAFTA-forbidden expropriation of its assets
- NAFTA Article 1102: Ethyl argued that the ban was a violation of rules requiring national treatment for foreign investors because it banned imports, but not local production
- NAFTA Article 1106: Ethyl argued that the ban was a “performance requirement” forbidden under this article, because it would effectively require Ethyl to build a factory in every Canadian province to comply with the transport ban and make an MMT investment in Canada.

II. ENVIRONMENTAL ISSUES INVOLVED

A. MMT

- Ethyl is the only producer of gasoline containing a manganese-based compound called MMT in its gasoline to enhance octane and reduce engine “knocking.”
- MMT is banned in all developed countries including the several states within the United States. 85% of all American gasoline is MMT free and has been banned in California and most of the eastern Seaboard.

B. Environmental and Health Issue

- Canada considers MMT to be a dangerous toxin because the manganese in MMT emissions poses a significant public health risk in humans. However, there is not enough scientific evidence to support MMT’s negative health effects.

- Automobile manufacturers have long argued that MMT damages emissions diagnostics and control equipment in cars, thus increasing fuel emissions in general. It should be noted that automobile manufacturers must bear the cost of repairing their car's damaged pollution control systems.

III. TRADE AND ENVIRONMENTAL ISSUES

A. NAFTA Chapter Eleven

- NAFTA Chapter Eleven prohibits expropriation and prohibition of performance requirements. As a result, member countries must compensate investors when their property is "expropriated" or when governments take measures "tantamount to expropriation."
- NAFTA was ratified with the understanding that Chapter Eleven would apply only to laws that explicitly related to investments.

B. CANADIAN TRADE LEGISLATION

- After finding that a gasoline additive was a health risk, Canada drafted a bill to eliminate the inter-provincial transport of the chemical.
- The scientific evidence of harm wasn't sufficient to ban it entirely under an environmental regulation, but Canada wanted to act quickly to prevent a public health risk so they attempted to make it impossible to provide the gas additive.

IV. CONCLUSION

A. CASE DECISION

- Canada had agreed to rescind the MMT ban, pay Ethyl in excess of \$19million, and take the unprecedented step of issuing a statement that MMT was neither an environmental nor health risk.

B. CASE IMPLICATION

- This case defined how expropriation is to be defined in NAFTA and future agreements.
- The fact that Canada could not ban suspected chemical components outright in favor of proven, safer alternatives is a testament of the trade agreement's effectiveness in restraining national and state actions.
- Now in addition to applying to investments, Chapter Eleven also applies to restricting legitimate health and safety laws that are inadvertently related to trade.

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