

alleging that legislation banning import and interprovincial trade in the gasoline additive methylcyclopentadienyl manganese tricarbonyl (MMT) prevented Ethyl from carrying on its business of importing and distributing MMT in Canada, contrary to a number of the obligations contained in Section A of Chapter Eleven. Canada filed its statement of defence in November 1997 refuting Ethyl's claim.

Canada raised a number of objections to the jurisdiction of the arbitral panel. It was contended that prerequisites in Section B to the submission of the claim to arbitration, and to Canada's consent to arbitration under Chapter Eleven, had not been met. Canada also maintained that the claim was not within the scope of Chapter Eleven for various reasons, including that it sought to recover damages allegedly occurring outside Canada.

In February 1998, the arbitral panel held a hearing on Canada's objections to the panel's jurisdiction. The panel made its award on jurisdiction in June 1998. In its award, the panel found that the prerequisites were "procedural" rather than jurisdictional, and that any failure of the claimant to meet them had either not prejudiced Canada or had since been cured. Canada's objections to jurisdiction based on the scope of application of Chapter Eleven were joined to the merits of the case.

The arbitration did not in fact proceed to a hearing on the merits, because Ethyl Corporation withdrew its claim in July 1998 as part of a resolution of all disputes associated with the MMT legislation, including the removal of the prohibition on import and interprovincial trade in MMT.

The resolution was prompted by a decision in April 1998 by a dispute-settlement panel established pursuant to the Agreement on Internal Trade (AIT). The panel found that the legislation was inconsistent with the AIT and recommended removal of the inconsistency. The AIT is an agreement between the Government of Canada and the governments of the provinces and territories of Canada having the objective of reducing and eliminating, to the extent possible, barriers to the free movement of persons, goods, services and investments within Canada. The challenge to the legislation under the AIT was made by the provinces of Alberta, Nova Scotia, Quebec and Saskatchewan.

On July 22, 1998, a notice of intent was served on Canada by S.D. Myers Inc., a U.S. corporation, alleging that an interim ban on the export of PCBs from Canada prevented Myers from obtaining PCB waste in Canada for disposal at its plant in Ohio, contrary to a number of provisions of Section A of Chapter Eleven. The issue has not proceeded to arbitration at this time.

To date, there has been no determination by any arbitral panel of the obligations of the NAFTA parties contained in Section A of Chapter Eleven.