
APPLETON & ASSOCIATES

INTERNATIONAL LAWYERS

New York Toronto

STATEMENT OF CLAIM

BETWEEN:

ETHYL CORPORATION

Claimant / Investor

v.

GOVERNMENT OF CANADA

Respondent / Party

Pursuant to Article 18 of the Arbitration Rules 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 hereby submits its Statement of Claim.

A. 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

B. STATEMENT OF THE FACTS

The Investor

1. Ethyl Corporation ("Ethyl") is a company incorporated under the laws of the State of Virginia, with its head office in Richmond, Virginia. Ethyl is the sole shareholder of Ethyl Canada Inc. ("Ethyl Canada"), a company incorporated under the laws of Ontario, with its head office in Mississauga, Ontario. As the sole shareholder of Ethyl Canada, Ethyl is an investor of a Party to the North American Free Trade Agreement ("NAFTA"). The investor has annexed a copy of its written consent to arbitration and waiver and the waiver of its investment, Ethyl Canada, with this Statement of Claim as Tab "1" pursuant to Article 18 of the UNCITRAL Arbitration Rules.

The Product

2. Methylcyclopentadienyl manganese tricarbonyl ("MMT") is an organo-metallic compound fuel additive which has been used in Canada since 1977 to provide octane enhancement at the refinery level for unleaded gasoline. In Canada, octane enhancement is generally provided at the refinery level through the addition of MMT to unleaded gasoline. Ethyl Canada owns and maintains a processing facility for its MMT operations in Corunna, Ontario.
3. Octane enhancement can also occur through the addition of aromatics (such as benzene) or through the addition of other additives including ethanol or methanol and its related products, ethyl tert-butyl ether ("ETBE") or methyl tertiary butyl ether ("MTBE"). MMT has been sold for use in unleaded gasoline in Canada since 1977. At the time of the introduction and passage of the legislation which gives rise to the present controversy, MMT sold by Ethyl Corporation was blended in over 95% of the unleaded gasoline volume sold in Canada.
4. Since December 1995, MMT was permitted for use in unleaded gasoline in the United States. MMT is currently approved for use in 49 of 50 American states and is currently sold in the United States.

The Legislation Giving Rise to the Claim

5. 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*. When the first session of the 35th Canadian Parliament ended in January 1996, Bill C-94 had not yet been passed into law. On April 22, 1996, in the second session of the 35th Parliament, the Government of Canada reintroduced this measure directly to Third Reading as Bill C-29. On April 25, 1997, Bill C-29 received Royal Assent and was proclaimed into force on June 24, 1997 as the *Manganese-based*

Fuel Additives Act, S.C. 1997, c.11 ("*MMT Act*"). A copy of the full text of the *MMT Act* is annexed as Tab "2" to this Statement of Claim.

6. The *MMT Act* prohibits the importation and interprovincial trade of certain manganese-based substances. Section 4 states:

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

7. The controlled substances referred to in section 4 are listed in a schedule to the *MMT Act*. The only substance listed is MMT. The *MMT Act* provides that authorization to import MMT may be obtained when the substance will not be used in unleaded gasoline--the principal use of MMT. Under section 4 of the *MMT Act*, no person can engage in the importation and interprovincial trade in a substance containing MMT without ministerial authorization. Under section 5 of the *MMT Act*, the Minister cannot grant such authorization where MMT is added to, or will be added to, unleaded gasoline. MMT can be used in products other than unleaded gasoline, however the *MMT Act* does not make provision for any procedure through which a person can obtain such an authorization.

Ethyl's Activity in Canada

8. Ethyl Canada purchases all of its supply of MMT from Ethyl directly or through Ethyl's wholly-owned subsidiary, Ethyl Petroleum Additives Inc. Ethyl makes MMT in co-operation with Albemarle Corporation, an independent corporation incorporated under the laws of the State of Virginia. Albemarle Corporation manufactures MMT under the terms of a license agreement granted by Ethyl to Albemarle Corporation. In addition, pursuant to the terms of a supply agreement, Ethyl purchases all of the major raw materials required to make MMT and supplies these materials to Albemarle Corporation. Albemarle Corporation processes the material supplied by Ethyl and manufactures MMT.
9. Prior to the passage of the *MMT Act*, Ethyl Canada was the sole importer into Canada, and was the sole distributor across Canada, of MMT. Ethyl, itself or through its subsidiaries, sold MMT to Ethyl Canada which imported the additive into Canada in a concentrated form. Once in Canada, MMT was processed by Ethyl Canada in its blending facility in Corunna, Ontario. After the MMT was processed, Ethyl Canada sold the MMT to petroleum refiners across Canada. Ethyl Canada carried on this business from 1977. While Ethyl Canada carries on other economic activity in Canada, the sale of MMT was a substantial part of Ethyl Canada's business. All MMT sold by Ethyl and its subsidiaries in Canada is manufactured in the United States of America.
10. A second petroleum additive product line which contains MMT, but is intended for use in products other than unleaded gasoline, is Greenburn™. Greenburn is a fuel additive

product line for home heating, commercial boilers, marine and vehicle diesel fuels. Greenburn reduces harmful particulates from the combustion of diesel fuel by up to 30%. This product line has been sold in Europe and East Asia and Ethyl has sold Greenburn in the United States.

11. The *MMT Act* prohibits Ethyl and Ethyl Canada from importing MMT into Canada for use in unleaded gasoline. The *MMT Act* also imposes an undefined and undisclosed approval and licencing requirement for MMT use in products other than unleaded gasoline-- products such as the Greenburn product line.
12. Ethyl prepared marketing plans and intended to introduce its Greenburn product line into the Canadian market in 1996. As Greenburn contains MMT, the introduction of the *MMT Act* dissuaded Ethyl from bringing Greenburn into the market as Ethyl would have to obtain an undefined ministerial authorization to sell Greenburn in Canada. Also, Ethyl was reluctant to expand substantial resources and efforts to introduce a new MMT product with the risk that such investment would be lost with the passage of the *MMT Act*.
13. The *MMT Act* does not prohibit the manufacture or use of MMT in Canada, it only requires that all MMT sold in Canadian unleaded gasoline be 100% Canadian. A domestic manufacturer of MMT can manufacture and distribute MMT for use in unleaded gasoline entirely within a province and not violate the *MMT Act*. If Ethyl wanted to maintain its presence in the Canadian octane enhancement market, it would be required to build a MMT manufacturing, blending and storage facility in each Canadian province. -ND
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Canadian Health Findings on MMT

14. The Canadian Government has undertaken several studies on the health effects of the use of MMT in Canadian gasoline. Each of these studies found that MMT does not present a risk to human health or the environment.
15. In 1978, Health and Welfare Canada issued a study which concluded:

Based on the limited data available at present, there is no evidence to indicate that ambient manganese concentrations resulting from the use of MMT as a primary antiknock agent in gasoline (maximum 5 µg/m³ under worst conditions), would constitute a hazard to human health.¹
16. In 1986, The Royal Society of Canada issued a Supplementary Report to the Commission

¹ *Methylcyclopentadienyl Manganese Tricarbonyl (MMT), Assessment of the Human Health Implications of Its Use as a Gasoline Additive*, Environmental Health Directorate, Health Protection Branch, at page 29.

on Lead in the Environment.² In this report, the Royal Society of Canada concluded:

*Manganese is one of the more abundant elements in the earth's crust, and its high concentrations in soils, water and air reflects this fact. National Health and Welfare Canada has predicted that the average additional individual intake of manganese resulting from the use of MMT in gasoline is likely to be no greater than 0.3 micrograms per day (µg/day). This compares with an average individual uptake from food, water and respiration of about 100-140 µg/day. By comparison with these large amounts already handled by the body, the extra loading on the public at large from MMT is and will remain very small.*³
(emphasis in original)

17. In 1994, Health Canada commissioned a report to re-examine the health effects on the Canadian population of the use of MMT in unleaded gasoline.⁴ According to the 1994 Health Canada report, "the primary health concern is not with MMT itself, but with the manganese oxides produced upon combustion of the additive."⁵ In light of this and other concerns, Health Canada undertook an independent risk assessment. The 1994 Health Canada Report concluded that:

Current levels of airborne respirable manganese to which the population in large Canadian urban centres are exposed are below the benchmark air level at which no adverse health risks are expected. This assessment includes infants, the elderly and those more heavily exposed than average because of their occupation or their proximity to roads.

*No correlation was evident between levels of ambient respirable (PM₁₀ or PM_{2.5}) manganese and MMT sales or use in unleaded gasoline, whether examined by geographical area or by season, in spite of the substantial changes in MMT use that have occurred.*⁶

² *Lead in Gasoline: Alternatives to Lead in Gasoline*, The Royal Society of Canada, The Commission on Lead in the Environment, February 1986.

³ *Lead in Gasoline: Alternatives to Lead in Gasoline*, The Royal Society of Canada, The Commission on Lead in the Environment, February 1986 at page v.

⁴ *Risk Assessment for the Combustion Products of Methylcyclopentadienyl Manganese Tricarbonyl (MMT) in Gasoline*. Environmental Health Directorate, Health Canada, December 6, 1994 at page 69. (Referred to as 1994 Health Canada Report).

⁵ 1994 Health Canada Report at page ii.

⁶ 1994 Health Canada Report at page 64.

18. The Health Canada Report went on to conclude that:

all analysis indicates that the combustion products of MMT in gasoline do not represent an added health risk to the Canadian population.⁷

Since MMT is not a threat to the environment, the Government of Canada could not prohibit MMT under the *Canadian Environmental Protection Act*.⁸ Since MMT is not a threat to human health or welfare, the Government of Canada could not prohibit MMT through any of its health legislation.

THE CLAIM: NAFTA Obligations Breached

19. The Government of Canada has breached three of its obligations contained in Section A of NAFTA Chapter 11: expropriation, national treatment and performance requirements.

Expropriation

20. The NAFTA regulates the conduct of its members whenever a Party expropriates, nationalizes or takes a measure tantamount to nationalization or expropriation, of the property of an investor of another NAFTA Party. This obligation is contained in Article 1110(1) of the NAFTA which states:

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.*

The claimant asserts that in introducing and proclaiming the *MMT Act*, Canada has expropriated the property of Ethyl within the meaning of Article 1110(1).

Expropriation of Investment

21. The *MMT Act* terminated Ethyl Canada's long-term ability to participate in the octane enhancement market as it did not manufacture MMT in Canada. As a result of the ban on

⁷1994 Health Canada Report at page 69.

⁸R.S.C. 1985 (4th Supp.), c.16.

inter-provincial sale and importation of MMT, Ethyl can no longer sell MMT into Canada.

22. It is clear that the Government of Canada knew that the *MMT Act* 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.⁹
23. 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 revenues is a major loss and could cause the parent company to re-evaluate maintaining a Canadian operation.*¹⁰ (emphasis in original)

24. 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 (the *MMT Act*) could be inconsistent with Canada's NAFTA obligations, including NAFTA's investment obligations.¹¹ As was stated by the Canadian Minister of International Trade:

*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.*¹²

Expropriation of Intellectual Property

25. Ethyl operates globally and has goodwill on a worldwide basis. The reckless behaviour of

⁹ C. Prakash, *Background Note - Use of MMT in Gasoline* (14 July 1993).

¹⁰ Memorandum from D. Head of Industry Canada to F. Vena of Environment Canada (24 February 1995).

¹¹ Letter of the Hon. A. Eggleton to the Hon. S. Marchi (23 February 1996).

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

the Government of Canada has adversely affected the company's goodwill both inside and outside Canada. The public statements of public officials in their official capacity constitute evidence of governmental practices. These government measures resulted in harm to Ethyl's property, including its goodwill regarding the use of MMT.

26. The damage to the commercial reputations of Ethyl and Ethyl Canada by the defamatory statements of Canadian officials constitute expropriation as defined in the NAFTA of the goodwill Ethyl Canada. These government measures have detrimentally affected the ability of the investor to sell its products in other jurisdictions. This damage is proximate and arises from the Government of Canada's breach of its NAFTA investment chapter obligations.
27. The Government of Canada's actions unreasonably interfered with the effective enjoyment of Ethyl Canada's property. The *MMT Act* interfered with Ethyl Canada's enjoyment of its goodwill as it will remove Ethyl Canada from the octane enhancement market and deprive it of the substantial benefits of its investment. This constituted an expropriation as defined in the NAFTA commencing on the introduction of the *MMT Act*, with damage continuing thereafter. Pursuant to Article 1110 of the NAFTA, compensation must be paid to the investor.

National Treatment

28. NAFTA Article 1102 states:
 1. *Each Party shall accord to investors of another Party treatment no less favourable 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 favourable 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.*
29. The *MMT Act* imposes an import ban on a foreign produced octane enhancer, MMT, while permitting the sale of domestically produced MMT and other octane enhancers. The *MMT Act* violates Canada's national treatment obligation under NAFTA Article 1102.
30. NAFTA Article 1102 sets out the NAFTA's national treatment obligation for investment. Under Article 1102(2) those investments, which are in like circumstances to those 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. The national treatment obligation is designed to ensure that all companies, whether domestic or foreign, are treated equally and without discrimination.

In Like Circumstances

31. While MMT is an octane enhancer with unique qualities, it competes with other octane enhancers such as ethanol, methanol and other substances. The functional end use of all of these octane enhancers is the same: to provide an unleaded gasoline that meets minimum octane requirements. MMT is an octane enhancer and Ethyl Canada was engaged in blending and distributing octane enhancers to gasoline refineries throughout Canada. Products that compete directly with MMT include ethanol, methanol, ETBE and MTBE. Ethanol and ETBE derive from the same base product, grain. MTBE derives from methanol. All these products are designed to achieve a similar effect—to increase the level of octane in unleaded gasoline to consumers. The end use of these products is indistinguishable to the consumer. Ethyl is in like circumstances to other producers of competitive products.

Treatment No Less Favourable

32. When preparing the *MMT Act*, the Government of Canada was well aware that Ethyl was the only company that imports MMT into Canada. It was clear that a measure to block the importation of MMT would discriminate against the existing Canadian market participant, owned by an American investor, and assist competing Canadian octane enhancers.¹³
33. There is no reasonable or plausible explanation why domestically produced MMT is permitted for sale within a province in Canada while imported MMT is not. The Canadian measure would give an unfair marketing and promotional advantage to investors based in Canada over non-Canadian-based investors selling the same product.
34. The *MMT Act* constitutes thinly-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.
35. 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 unleaded gasoline. MMT may still be made and used locally. The Minister was asked:

¹³ C. Prakash, *Background Note - Use of MMT in Gasoline* (14 July 1993).

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.*¹⁴

36. The Government of Canada has not claimed any legitimate basis for the distinction it has made on the national origin of the MMT contained in the *MMT Act*. MMT is still permissibly sold in Canada provided that it is manufactured and sold within the same province in Canada. This results in less favourable treatment being accorded to foreign investors and their investments.¹⁵

Expansion, Management, Conduct or Operation of an Investment

37. The *MMT Act* contains a prohibition on the cross-border trade of MMT. This prohibition affects the expansion, management, conduct and operation of investments as described in NAFTA Article 1102. As a result, Ethyl must abandon its importation of foreign-made MMT into Canada and establish a plant in every Canadian jurisdiction to maintain its national market in Canada.
38. Parties must accord equal treatment between foreign and domestic investors and their investments. This obligation imposes a positive duty to ensure equal treatment and a corresponding duty of non-interference into the expansion, management, conduct and operation of investments.
39. The Government of Canada's failure to meet its NAFTA national treatment obligation has caused harm to Ethyl both inside and outside of Canada. As a result of the Government of Canada's measures, Ethyl has suffered damage in other countries.
40. The *MMT Act* accords less favourable treatment by providing advantages to Canadian-located investors over the investments of American investors thereby violating the Government of Canada NAFTA obligations.

¹⁴ Deputy Prime Minister and Minister of the Environment, the Hon. Sheila Copps, Statement to the Press (19 May 1995) at page 5.

¹⁵ *Thailand - Restrictions on Importation of an Internal Taxes on Cigarettes (United States v. Thailand)* (1990), GATT Doc. DS10/R, 37 B.I.S.D. (1983) 107, is instructive in this lack of justification. In this case the Thai government refused to allow the importation of cigarettes basing its restriction on the health of the population. However, the continued production of domestic cigarettes was permitted. The panel held that if this was the true concern there were other means of achieving the goal. Similarly, if MMT were truly regarded as harmful the Canadian government could have opted to have simply enacted a complete ban on the substance. Instead the legislation is aimed simply at protecting the domestic economy.

Performance Requirements

41. NAFTA Article 1106 prohibits a number of specific governmental activities. The relevant portions of Article 1106 read:

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;*

42. The Article 1106 obligation prohibits a Party from imposing or enforcing a requirement, commitment or undertaking in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor. Under Article 1106(1)(b), Parties cannot require investors to include in their products or services any amount of goods or services that originate within the Party. Under Article 1106(1)(c), Parties cannot require investors to purchase, use or accord preferential treatment to any products or services made domestically.

43. The Claimant contends that the Government of Canada has violated NAFTA Article 1106 in three ways:

- (i) The *MMT Act* imposes on investments of investors seeking to distribute MMT in Canada the requirement to use only MMT that is made in Canada;
- (ii) The ban on imported and extra-provincial trade in MMT imposes on investments of investors seeking to distribute MMT in Canada a requirement to build an MMT manufacturing, blending and storage facility in each Canadian province; and
- (iii) The *MMT Act* imposes on investments of investors seeking to distribute MMT in Canada the *de facto* requirement to use domestic supplies and labour to complete the construction of the MMT manufacturing facilities because it is commercially unfeasible to do otherwise.

(i) The Requirement to Purchase Domestic MMT

44. In banning the importation of MMT, all MMT that is purchased and used in Canada must be domestically-produced MMT. The *MMT Act* violates Article 1106(1)(c) by according

a preference to domestic MMT over imported MMT. In order to comply with the *MMT Act*, any investment of an investor who wishes to distribute MMT in a province in Canada must purchase provincially-produced MMT.

(ii) The Requirement to Build MMT Production Facilities in Each Canadian Jurisdiction

45. By banning the importation of MMT, the *MMT Act* requires that all future MMT sold in Canada be 100% Canadian. To maintain its function as a viable national MMT distributor on a long-term basis, an MMT producer would be required to build a manufacturing, blending and storage facility in each of the ten Canadian provinces upon the introduction of the *MMT Act* into the House of Commons. This measure is in violation of Article 1106(1)(b).

(iii) The Requirement to Purchase Canadian Supplies and Labour

46. As a result of the requirement to build a facility in each province, it would be commercially necessary for Ethyl Canada to use domestic construction goods and services. This *de facto* requirement represents a distinct performance requirement, in violation of subparagraph Article 1106(1)(c), since it would be effectively necessary to purchase and use domestic supplies and services to complete construction of the new facilities in a cost-effective manner.
47. A reasonable investment of an investor that wished to participate on a national basis in the MMT market would be required to build a plant in each province in which it intended to sell MMT. Evidence will be presented that it would reasonably take from 18-24 months to locate and construct an operational MMT plant. Accordingly, a reasonable investment was required to commence building on the introduction of the *MMT Act* in May 1995.
48. Investments of Investors were effectively required to purchase domestic construction goods and services immediately upon the *MMT Act's* introduction into Parliament. A reasonable investment of an investor that wished to participate on a national basis in the MMT market would have to start to build MMT-producing facilities immediately on the introduction of the *MMT Act* into Parliament.

The Performance Requirement Exception

49. 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:
- i. not applied in an arbitrary or unjustified manner;
 - ii. not a disguised restriction:
 - (a) on international trade

- (b) on investment; and
 - iii. is necessary:
 - (a) to protect human, animal or plant life or health; or
 - (b) for the conservation of living or non-living exhaustible natural resources.

50. The *MMT Act* does not comply with the Article 1106(6) exception to the Performance Requirement obligation.

Losses Suffered By Ethyl Corporation

51. Ethyl Corporation has suffered the following losses:

1. Lost profits since the date of introduction of Bill C-94;
2. Loss of value of its investment in Ethyl Canada;
3. 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;
4. The cost of reducing operations in Canada;
5. Fees and expenses incurred to oppose Bills C-94 and C-29 and the *MMT Act*; and
6. Tax consequences of the award to maintain the integrity of the award.

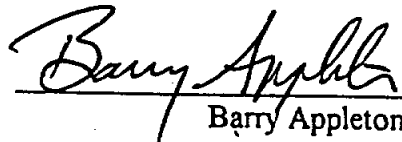
C. THE POINTS AT ISSUE

1. There is one basic point at issue: Has the Government of Canada taken measures inconsistent with its obligations under Section A of Chapter 11 of the NAFTA?

D. RELIEF SOUGHT

The Claimant claims damages in the amount of:

1. Not less than US\$251,000,000 (TWO HUNDRED AND FIFTY-ONE MILLION UNITED STATES DOLLARS) arising out of the Government of Canada's breach of its NAFTA obligations;
2. Costs associated with these proceedings, including all professional fees and disbursements;
3. Pre-award and post-award interest at a rate to be fixed by the Tribunal; and
4. Such further relief that the Tribunal may deem appropriate.



 Barry Appleton

DATE OF ISSUE: October 2, 1997

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Ethyl Corporation
330 South Fourth Street
Richmond, Virginia 23219-4304

July 8, 1997

The Government of Canada
Office of the Deputy Attorney General of Canada
Justice Building
239 Wellington Street
Ottawa, Ontario
K1A 0H8

Dear Mr. Thomson:

Re: *Ethyl Corporation v. The Government of Canada*
Investor-State Dispute Pursuant to Chapter 11 of the NAFTA

Pursuant to Article 1121(1)(a) of the North American Free Trade Agreement ("NAFTA"). Ethyl Corporation consents to arbitration in accordance with the procedures set out in the NAFTA; and

Pursuant to Article 1121(1)(b) of the NAFTA, Ethyl Corporation waives their right to initiate or continue before any administrative tribunal or court under the law of any Party to the NAFTA, or other dispute settlement procedures, any proceedings with respect to all measures, including any laws, regulations, procedures, requirements or practices, taken by the Government of Canada in the introduction, passage, proclamation and enforcement of the *Manganese-based Fuel Additives Act*, S.C. 1977, c.11, and any measure related to its predecessor bills before the Canadian Parliament, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages (except for the costs of the action), before an administrative tribunal or court under the laws of Canada.

ETHYL CORPORATION

A handwritten signature in cursive script, appearing to read "Thomas E. Gottwald".

Thomas E. Gottwald
President



ETHYL CANADA INC.
350 BURNHAMTHORPE RD. WEST
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TEL: 905-566-9951 FAX: 905-566-9962

President

July 8, 1997

The Government of Canada
Office of the Deputy Attorney General of Canada
Justice Building
239 Wellington Street
Ottawa, Ontario
K1A 0H8

Dear Mr. Thomson:

Re: *Ethyl Corporation v. The Government of Canada*
Investor-State Dispute Pursuant to Chapter 11 of the NAFTA

Pursuant to Article 1121(1)(b) of the NAFTA, Ethyl Canada Inc., the enterprise, waives its right to initiate or continue before any administrative tribunal or court under the law of any Party to the NAFTA, or other dispute settlement procedures, any proceedings with respect to all measures, including any laws, regulations, procedures, requirements or practices, taken by the Government of Canada in the introduction, passage, proclamation and enforcement of the *Manganese-based Fuel Additives Act*, S.C. 1977, c.11, and any measure related to its predecessor bills before the Canadian Parliament, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages (except for the costs of the action), before an administrative tribunal or court under the laws of Canada.

ETHYL CANADA INC.

A handwritten signature in black ink, appearing to read "D.C. Wilson", is written over the typed name.

David C. Wilson
President

CHAPTER 11

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COMING INTO FORCE

21. 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

SUMMARY

This enactment prohibits interprovincial trade in and importation for a commercial purpose of certain manganese-based substances that are added to unleaded gasoline. The Minister may authorize interprovincial trade in or importation for a commercial purpose of such a substance that 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.

45-46 ELIZABETH II

45-46 ELIZABETH II

CHAPTER 11

CHAPITRE 11

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

[Assented to 25th April, 1997]

[Sanctionnée le 25 avril 1997]

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

Short title

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

Definitions

2. In this Act,

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

Définitions

"controlled substance"
"substance à usage contrôlé"

"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"
"ministre"

"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"
"essence sans plomb"

"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

Binding on Her Majesty

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

Prohibition

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

Authorization Minister	<p>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</p> <p>(a) that the controlled substance is not unleaded gasoline; and</p> <p>(b) that the controlled substance will not be added to unleaded gasoline.</p>	<p>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.</p>	Autorisation
Conditions	<p>(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.</p>	<p>(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.</p>	Conditions
Security	<p>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</p> <p>(a) that the controlled substance is not unleaded gasoline and that the controlled substance will not be added to unleaded gasoline; and</p> <p>(b) that the applicant will comply with the conditions of the authorization.</p>	<p>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.</p>	Garantie
Revocation	<p>7. The Minister may revoke the authorization</p> <p>(a) on the application or with the consent of the holder of the authorization, or</p> <p>(b) where the Minister</p> <p>(i) is no longer satisfied that the controlled substance is not unleaded gasoline,</p> <p>(ii) is no longer satisfied that the controlled substance will not be added to unleaded gasoline, or</p> <p>(iii) is satisfied that the holder has not complied with the conditions of the authorization,</p> <p>and, where the Minister revokes the authorization under paragraph (b), the Minister may realise on the security provided by the holder.</p>	<p>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.</p>	Retrait de l'autorisation
Regulations	<p>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.</p>	<p>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.</p>	Règlements

RECORDS

REGISTRE

interprovincial
trade and
importation

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.

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.

Commerce
interprovincial
et importationContents of
records

(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:

(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 :

Contenu du
registre

- (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*.

- 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*.

Retention
period

(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.

(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.

Conservation
du registre

Report

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.

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.

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.

(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.

(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.

(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.

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.

(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.

Avis de demande de renseignements et d'échantillons

Contenu de l'avis

Observation de l'avis

Prorogation du délai

Désignation

Production du certificat

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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 :

(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

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 three years, or to both.

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

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 :

(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

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.

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.

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.

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.

Commerce interprovincial et importation

Faux renseignements

Autres infractions

Agents et mandataires

Application of provisions of the Canadian Environmental Protection Act

Interprovincial trade and importation

False or misleading information

Other offences

Sufficient proof of offence

ence

(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.

(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.

Disculpation

ence

(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.

(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.

Disculpation

ers of
rt

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:

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 :

Ordonnance
du tribunal

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

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

(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;

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

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

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

(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;

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) 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;

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) 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;

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.

(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.

Publication

(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.

(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.

Publication

due to Majesty

(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.

(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.

Créances de Sa Majesté

comes into force and

(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.

(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.

Prise d'effet

application of Canadian Environmental Protection Act

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

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.

Loi canadienne sur la protection de l'environnement

(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.

AMENDMENTS TO THE SCHEDULE

MODIFICATION DE L'ANNEXE

Orders of the
Governor in
Council

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

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

ENTRÉE EN VIGUEUR

Coming into
force

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

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

Entrée en
vigueur

SCHEDULE
(Sections 2, 11 and 20)

CONTROLLED SUBSTANCES

Methylcyclopentadienyl manganese tricarbonyl

Méthylcyclopentadiényl manganèse tricarbonyle

ANNEXE
(articles 2, 11 et 20)

LISTE DES SUBSTANCES À USAGE CONTRÔLÉ

Méthylcyclopentadiényl manganèse tricarbonyle

Méthylcyclopentadienyl manganese tricarbonyl