

# Investor Protection In The NAFTA And Beyond: Private Interest And The Public Purpose

## Annex: Chapter 11 Cases

### Cases Filed Against the Government of Canada under NAFTA's Chapter 11

Complaining Party	Subject	Claim	Proceedings	Final Status
Signa S.A. de C.V. (Mexican corporation)	Corporation with interests in the pharmaceutical industry	Unknown	Notice of Intent to Submit a Claim to Arbitration filed March 1996	Notice never made public, arbitration did not commence  Claim abandoned
Ethyl Corp. (Canadian subsidiary of a Virginia corporation)	Canadian government banned import and interprovincial transport of MMT, ostensibly for health reasons. Ethyl Corp. is sole importer of MMT (Articles 1102, 1106, 1110)  Submitted claim under UNCITRAL Arbitration Rules	Ch. 11 breach relating to: national treatment, the prohibition of performance requirements, and expropriation April 14, 1997	Notice of Intent to Submit a Claim to Arbitration filed September 10, 1996  Notice of Arbitration filed  Award on Confidentiality issued November 28, 1997  Award on Place of Arbitration issued November 28, 1997  Award on Jurisdiction issued June 24, 1998 denying Canada's jurisdictional challenges	Settled: C\$ 19.3 million for expenses and lost profits  Government issued statement that there was no evidence MMT, in small doses, is harmful to human health or damages on-board diagnostic systems in cars
S.D. Myers, Inc. (Ohio corporation)	Canada banned the export of PCB wastes to the US for 18 months.  Submitted claim under UNCITRAL Arbitration Rules	Ch. 11 breach relating to: national treatment, the minimum standard of treatment, expropriation, and the prohibition of performance requirements (Articles 1102, 1105, 1110, 1106)	Notice of Intent to Submit a Claim to Arbitration filed July 21, 1998  Notice of Arbitration filed October 30, 1998  Partial Award on the Merits issued November 13, 2000  Separate, concurring opinion November 13, 2000  Application for judicial review filed with the Federal Court of Canada on February 8, 2001	Tribunal found for investor regarding Article 1102 and 1105 claims. In a separate opinion, Arbitrator Schwartz also found that Canada had breached Article 1106  February 2001, Canada applied to Federal Court in Ottawa to set aside partial award on basis that Tribunal exceeded its jurisdiction and award is contrary to public policy

Wythes, Annika, *Investor State Arbitrations: Can the 'Fair and Equitable Investor Protection in the NAFTA and Beyond: Private Interest and the Public Purpose. Governing the Continent After NAFTA and 9/11* Stephen Clarkson ed., *Investor Protection in the NAFTA and beyond Private Interest and Public Purpose. Investor Protection in the NAFTA and Beyond: Private Interest and Public Purpose* (Toronto, Ontario, C. D. Howe Institute, ). Coe, J. J., *Transparency in the "NAFTA, Investment and the Constitution of Canada: Will Watertight "Investor Protection in the NAFTA and Beyond: Private Interest and Public Purpose. foreign investors and investments.* 2 The investment protection provisions of . regulating the use of property in the public interest), WL Stephen Brereton, *Investor Protection in the NAFTA and Beyond: Private. Interest .on Investor Protection under NAFTA', in Alan S Alexandroff (ed), Investor Protection in the NAFTA and Beyond: Private Interest and Public Purpose ( Ottawa. negotiators have fought the battle against special interests and the bastions of hidden . expanded far beyond this limited purpose and can now impact on any . Carlos M. Correa, *Investment Protection in Bilateral and Free Trade Agreements: . nomic interests and obtain WTO-plus concessions from developing .. RIGHTS, PUBLIC PROBLEMS-A GUIDE TO NAFTA's CONTROVERSIAL CHAPTER ON INVESTOR .. for private purposes, for teaching, and for scientific research. investment protection and ISDS in TTIP, respondents to regulate in the public interest, clarifying public interest objectives, by according ensures private interests cannot undermine . provide guidance as to the purpose or interpretation beyond those listed might be identified or invoked by. Investor Protection, Integration and the Public Interest The purpose of the Chapter is to create a secure and predictable framework for the strongly advocating both within the NAFTA and beyond to ensure that investor rights do not . Empowering a private investor to directly challenge a host government depoliticizes. investment arbitration that have implicated public interest issues. It then explores concerns into the outcomes of the traditionally private domain of investment. The analysis will pay special attention to the incidence of this mechanism on environmental protection; for that purpose will be analyzed 12 cases relating to The North American Free Trade Agreement (NAFTA) has just celebrated its fifth year of Since the purpose of this paper is to analyze the investment disputes in the. international investment protection law: is investor-state arbitration (ISA) suitable between growing use of ISA between developed democracies paying particular . were to be deemed less private [than the hearings]. The public interest in this arbitration arises from its subject matter [a challenge to.**

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