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DR. JUR. KARL-HEINZ BÖCKSTIEGEL

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22 September 1997

cc: Mr. Charles N. Brower, Washington - Fax No. 001 202 639 8355 ✓
Mr. Charles N. Brower, Swissotel, Istanbul - Fax No. 0090 212 259 0105
Mr. Marc Lalonde - Fax No. 001 514 397 3222

Re.: NAFTA / UNCITRAL Case
Ethyl Corp. v. Government of Canada

Procedural Order

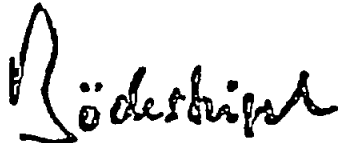
The members of the Tribunal have held a first deliberation taking into account the communications received from the Parties and, to start the procedure in this case, have decided as follows:

1. The chairman shall contact by telephone each of the Parties to agree on a meeting between the Parties and the Tribunal as soon as possible. It was felt that a 3-party telephone conference would have the disadvantage that the members of the Tribunal could not deliberate between themselves before responding to questions raised by the Parties and that a physical meeting would present a much better opportunity to fully discuss present procedural issues and the next procedural steps.
2. The Tribunal suggests to have the meeting in the morning of Wednesday 1 October in New York. This would be only for the convenience of such a short procedural meeting and without prejudice to the choice of the official place of arbitration and of hearings. The chairman shall verify by telephone the availability of the representatives of the Parties for that meeting.
3. To enable the other Party and the members of the Tribunal to prepare for the meeting, it would be helpful if each Party circulates at least three days before the meeting by fax a list of the issues it intends to raise at the meeting.
4. With reference to Art. 41(1) UNCITRAL Rules the Tribunal requests each Party to deposit by wire transfer an amount of US \$ 50,000.- in the trust account arranged by the chairman as a US Dollar account for this case:

- 2 -

Prof. K.-H. Böckstiegel
Account No. (410) 85 85 782
Deutsche Bank Bergisch Gladbach
BLZ 370 700 60
Germany
Re.: Arbitration Ethyl / Canada

5. In accordance with Art. 38 UNCITRAL Rules the Tribunal intends to apply a fee schedule of US \$ 425.- per hour used for this arbitration and, with regard to its costs, the standards used for ICC arbitrators on which the most recent note of the International Chamber of Commerce is enclosed.



Karl-Heinz Böckstiegel
Chairman of Tribunal



International Chamber of Commerce
38, Cours Allier 1^{er}, 75008 Paris
Chambre de Commerce Internationale



International Court of Arbitration - Cour Internationale d'Arbitrage

new: January 1, 1993

**Revised notice to the arbitrators;
PERSONAL AND ARBITRAL TRIBUNAL EXPENSES
(This replaces the notice, dated November 10, 1990)**

Please be advised that an arbitrator's personal expenses and expenses of the arbitral tribunal which are incurred on or after January 1, 1993 will be reimbursed by the Secretariat of the ICC International Court of Arbitration from the advance on costs made by the parties on the following basis:

1. A flat US\$ 400 per diem allowance is to be paid to an arbitrator for each day and night that the arbitrator is required to spend on ICC arbitration business out of his or her town of residence if hotel accommodations for the night are utilized.
2. Alternatively, a per diem allowance up to a maximum of US\$ 600 is to be paid for each day and night the arbitrator is required to spend on ICC arbitration business out of his or her town of residence, during which period hotel accommodations for the night are utilized, provided all expenses are justified by invoices or receipts and subject to point 4 below.
3. A flat US\$ 165 per diem allowance for each day the arbitrator spends on ICC arbitration business out of his or her town of residence, during which period hotel accommodations for the night are not utilized.
4. Expenses to be covered by the per diem allowance are those directly related to out-of-pocket personal living expenses, that is:
 - . Hotel accommodations (except under point 3 above)
 - . Meals/Snacks
 - . Laundry/Pressing
 - . Inner-city transport (including taxis)
 - . Telephone calls, telefacsimiles or other communications
 - . Tips.

Expenses may not include such items as entertainment (theater tickets, etc.), luxury restaurants or accompanying guests, nor payment of covered items for another arbitrator receiving an ICC per diem. In addition, only limited and reasonable telephone, telefacsimile or other communications charges may be included.

5. As the per diem allowance (whether a flat rate or a higher allowance justified by invoices or receipts) is considered as covering all items listed in point 4 above, these items cannot be taken into consideration in addition to the per diem rate.
6. An arbitrator may be reimbursed for actual expenses (justified by invoices or receipts) for meals and inner-city transport incurred within his or her town of residence which are directly related to the ICC arbitration in question, subject to the limitations described in point 4 above, to the extent relevant.
7. If required to travel for the purpose of an ICC arbitration, an arbitrator will be reimbursed for his or her actual cost of transportation, as justified by invoices and/or ticket stubs, provided that the amount of the reimbursable costs shall not exceed the relevant business class air fare in the case of flights of up to six hours. The cost of first class air travel will be reimbursable for longer flights. In addition, taxi fares for transportation to and from the airport will be reimbursed.
8. All expenses related to tribunal activities such as clerical secretary (typist), equipment, telex, telefacsimiles, phone calls, meeting room reservations, etc. are to be paid under "tribunal arbitration expenses" and not to be imputed to "per diem" living expenses.
9. Arbitrators may request advance payment on per diem allowances and transportation costs, but must submit afterwards pertinent supporting documentation, including transportation tickets and a statement of working days and nights spent out of town on arbitration business.
10. Requests for reimbursement of tribunal expenses and per diem allowances must be presented to the Secretariat in a readily comprehensible form both in order to permit the Secretariat to carry out its accounting responsibilities and because the parties occasionally request the Secretariat to provide them with a statement of the expenses incurred by the arbitral tribunal.
11. In order to ensure that the advance on costs made by the parties is adequate to meet the costs of the arbitration, arbitrators are urged to submit to the Secretariat their requests for reimbursement of tribunal expenses and per diem allowances, together with any required justifications, on a continuous basis as such expenses are incurred. All requests for reimbursement of tribunal expenses and per diem allowances relating to the period prior and up to the submission of the draft award are due at the latest along with the submission of such draft to the Secretariat. After this date no further requests for reimbursements of such expenses and allowances can be taken into consideration.

Where there is a three-member tribunal, the co-arbitrators and the chairman should co-ordinate their submission of bills of tribunal expenses and per diem allowances in order to ensure that they reach the Secretariat no later than the draft of the final award.

PROF. DR. JUR. KARL-HEINZ BÖCKSTIEGEL

24 September 1997

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Mr. Marc Lalonde (Montreal) Fax: 001 514 397 3222

Re: NAFTA/UNCITRAL Case
Ethyl Corp. v. Government of Canada

Procedural Order

The Tribunal refers to its Procedural Order of 22 September 1997 and the telephone and fax communications the chairman has had with both Parties.

After both Parties have confirmed their availability for the meeting in New York on that date, the Tribunal invites the Parties to a

Procedural Meeting
on 2 October 1997
starting at 9.00 A.M.
at a place in Manhattan still to be communicated.

Karl-Heinz Böckstiegel

Chairman of Tribunal

PROF. DR. JUR. KARL-HEINZ BÖCKSTIEGEL

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13 October 1997

cc: Mr. Charles N. Brower, Washington - Fax No. 001 202 639 931
Mr. Marc Lalonde - Fax No. 001 514 397 3222

Re.: NAFTA / UNCITRAL Case
Ethyl Corp. v. Government of Canada

Procedural Order

The Tribunal hereinafter places on record the results of the Procedural Meeting with the Parties on 2 October 1997 in New York City:

1. Present at the meeting:

For the Claimant: Mr. Barry Appleton
Prof. Andreas Lowenfeld
Mr. Steve Mayer
Mr. Anthony Macri

For the Respondent: Ms. Valerie Hughes
Mr. Brian Evernden
Mr. David Halgh
Ms. Ann Ewasechko

Arbitrators: Mr. Karl-Heinz Böckstiegel (Chairman)
Mr. Charles N. Brower
Mr. Marc Lalonde

2. Time of the Meeting: 9.00 A.M. to 12.45 P.M.

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3. Introductory Statement by the Chairman:

- a) The Parties and the Tribunal confirm that the Tribunal has been properly constituted.
- b) The Chairman recalls the limited purpose of the Meeting, which is only to have a short exchange on the present procedural issues and on the next procedural steps.
- c) The Tribunal and the Parties agree on an agenda for the Meeting based on the lists of issues submitted by both Parties and, in addition, several issues suggested by the Tribunal. This agenda is reflected in the paragraphs that follow.

4. Communications between the Parties and the Tribunal:

- a) All communications by the Parties to the Tribunal shall be sent simultaneously to all three members of the Tribunal and to the other Party. Communications by the Claimant shall be in order as communicated to the Respondent if they are simultaneously sent to Ms. Hughes and by the same means to the Deputy Attorney General of Canada. Contrary to what was said at the Meeting, the Tribunal now does not consider it necessary that an additional copy be sent to the Chairman for the Administrative Secretary.
- b) Shorter Submissions of up to approximately 10 pages may be communicated by fax confirmed by mail; in such cases the fax date of the transmission shall be the date of service. All other submissions shall be made by courier.
- c) Insofar as documents are submitted, it shall be sufficient if copies are provided. Originals shall be provided only, if requested by the other Party or by the Tribunal.

5. Arbitration Costs:

- a) At the request of the Respondent, the Chairman explained in detail the respective provisions in the Tribunal's Procedural Order of 22 September 1997, the application of UNCITRAL Rules 38, 39 and 41 and the considerations that had led to the specific standards contained in that Procedural Order. He confirmed that the Tribunal would supply regularly to the Parties a summary of the costs and fees incurred and that its accounting would be open to independent auditing if so requested by a Party. Both Parties considered that explanation to be sufficient.
- b) The Claimant confirmed that it had transferred its share of the deposit on 26 September 1997. The Respondent confirmed that it would now take the necessary steps so that its share of the deposit could be transferred within about one week from the date of the Meeting.

- 3 -

6. Recording and Transcript of Proceedings:

It was agreed that a recording and transcript of every Hearing shall be made and that appropriate arrangements shall be made directly and commonly by the Parties in due time with each Party sharing the costs, subject to a later decision by the Tribunal as to which Party shall bear which costs. The Parties shall inform the Tribunal of the respective arrangements made not later than 2 weeks before a Hearing.

7. Administrative Secretary:

The Tribunal suggested and the Parties agreed that the Tribunal may use an Administrative Secretary for Hearings and other logistics. The respective costs shall be part of the costs of arbitration.

8. Procedure for Dealing with Jurisdictional and Other Questions:

Reference was made to UNCITRAL Rule 21. After a long and detailed discussion in which the Parties presented their views and the Tribunal raised additional questions and options, the Tribunal decided as follows:

- a) The Tribunal accepted the Claimant's Statement of Claims which was distributed at the Meeting.
- b) The Respondent shall submit not later than 1 December 1997 a Statement of Defence in which, however, no detailed response to issues of damages is required.
- c) The Respondent shall submit not later than 31 December 1997 a Memorial on all issues of jurisdiction together with all documents and written statements of all witnesses it relies on in this regard.
- d) The Claimant shall submit not later than 30 January 1998 a Counter-Memorial on all issues of jurisdiction together with all documents and written statements of all witnesses it relies on in this regard.
- e) A Hearing shall be held, for a maximum of 2 days, on 24 and 25 February 1998 on all issues of jurisdiction, including any examination and cross-examination of witnesses whom the Parties may wish to be heard. The Parties have agreed with these dates.
- f) Not later than 10 February 1998 each Party shall submit a list of all witnesses it plans to present at the Hearing.
- g) In order to ensure that the Hearing can be held at the agreed time the Tribunal does not intend to grant any extensions of the above periods for submissions.

- 4 -

9. Hearings In Camera and Confidentiality:

- a) In accordance with UNCITRAL Rule 25.4 Hearings shall be held in camera unless the Parties agree otherwise.
- b) The Parties shall keep confidential all documents submitted by the other Party which that other Party has marked as "Confidential Business Information".
- c) The Parties shall seek to agree and submit to the Tribunal for incorporation in a further Procedural Order a wording regarding the use and extent of confidentiality of submissions and documents filed in this arbitration proceeding.

10. Place of Arbitration:

Reference was made to NAFTA Art.1130 and UNCITRAL Rule 16.
The Respondent submitted, at the Meeting, a brief regarding the Place of Arbitration. The Claimant shall respond to this brief within 2 weeks after the Meeting. Should the Respondent wish to respond to that brief, it shall so inform the Tribunal within 4 days after receiving the Claimant's brief.
After the exchange of briefs is completed, the Tribunal will decide on the Place of Arbitration.

11. Evidence:

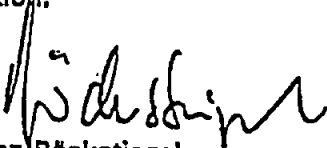
Reference was made to UNCITRAL Rules 24 and 25.
The Parties shall, as soon as possible, discuss bilaterally a procedure and schedule regarding the presentation of evidence and requests for and production of documents and inform the Tribunal of the agreement reached and any questions on which a decision by the Tribunal is still required in this regard.

12. Procedural Complaints:

The Tribunal requested and the Parties agreed that any complaints by a Party as to what it may consider to be an improper procedure shall be communicated to the Tribunal without delay.

13. Language of the Arbitration:

In accordance with UNCITRAL Rule 17 it was agreed that the language of this Arbitration shall be English. Documents in other languages may be submitted; but shall be accompanied by an English translation.


Karl-Heinz Böckstiegel
Chairman of Tribunal

PROF. DR. JUR. KARL-HEINZ BÖCKSTIEGEL

By Courier

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1 December 1997

cc: Mr. Charles N. Brower, Washington
Mr. Marc Lalonde, Montreal

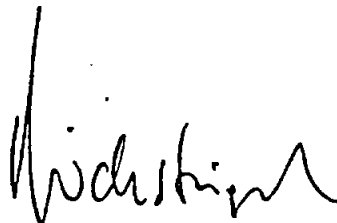
Re.: NAFTA / UNCITRAL Case
Ethyl Corp. v. Government of Canada

Procedural Order

Enclosed please find the

Decision Regarding the Place of Arbitration.

Further details regarding the Hearing in Toronto on 24 and 25 February 1998 will be communicated by the Tribunal to the Parties as soon as possible.



Karl-Heinz Böckstiegel
Chairman of Tribunal

**Decision
Regarding the Place of Arbitration**

**in the
NAFTA / UNCITRAL Case**

**between
Ethyl Corporation (Claimant)
and
The Government of Canada (Respondent)**

**before
the Tribunal consisting of**

**Prof. Dr. Karl-Heinz Böckstiegel (Chairman)
Mr. Charles N. Brower (Arbitrator)
Mr. Marc Lalonde (Arbitrator)**

Date of Decision: November 28, 1997

Both parties have presented extensive written submissions, as well as oral arguments during the Procedural Meeting in New York City on October 2, 1997, regarding what should be the place of arbitration in this case. In these submissions and arguments the parties have been ably represented as follows:

Ethyl Corporation ("Ethyl") by:

Mr. Barry Appleton
Prof. Andreas Lowenfeld
Mr. Steve Mayer
Mr. Anthony Macri

The Government of Canada ("Canada") by:

Ms. Valerie Hughes
Mr. Brian Evernden
Mr. David Haigh
Ms. Ann Ewasechko

Ethyl urges that the place of arbitration be New York City,¹ whereas Canada (at page 26 of its Memorandum of October 2, 1997) requests the Tribunal "to determine that the place of arbitration should be Ottawa, or alternatively, could be Toronto...".

Our decision on this point, Ethyl suggests (at page 2 of its Submission of October 16, 1997), has "importance...not only for this arbitration but is a persuasive precedent for future NAFTA investor-state arbitrations held under the auspices of the UNCITRAL Arbitration Rules." Doubtless this view arises from the fact, as the Tribunal is informed, that the present arbitration is the first NAFTA dispute between Canada and an alien investor.

Our decision is governed by NAFTA Article 1130(b), which provides that absent "the disputing parties agree[ing] otherwise, a Tribunal shall hold an arbitra-

¹ Ethyl has abandoned its alternative proposal, made in its Notice of Arbitration, that the place of arbitration be Washington, DC.

tion in the territory of a Party [to NAFTA] that is a party to the New York Convention, selected in accordance with...the UNCITRAL Arbitration Rules if the arbitration is under those Rules." All three NAFTA Parties, *i.e.*, Canada, Mexico and the United States, are parties to the New York Convention. Therefore our selection is to be made from among sites in those three countries.

The UNCITRAL Rules themselves provide only, in Article 16(1), that "the place where the arbitration is to be held...shall be determined by the arbitral tribunal, having regard to the circumstances of the arbitration." (Emphasis added.)

The Tribunal also has been referred by both parties to UNCITRAL's Notes on Organizing Arbitral Proceedings. These Notes, which are not binding,² state (in paragraph 22):

Various factual and legal factors influence the choice of the place of arbitration, and their relative importance varies from case to case. Among the more prominent factors are: (a) suitability of the law on arbitral procedure of the place of arbitration; (b) whether there is a multilateral or bilateral treaty on enforcement of arbitral awards between the State where the arbitration takes place and the State or States where the award may have to be enforced; (c) convenience of the parties and the arbitrators, including the travel distances; (d) availability and cost of support services needed; and (e) location of the subject-matter in dispute and proximity of evidence.^{3, 4}

Canada makes two threshold arguments that must be addressed at the out-

² See Introduction to the Notes, paragraph 2:

No legal requirement binding on the arbitrators or the parties is imposed by the Notes. The arbitral tribunal remains free to use the Notes as it sees fit and is not required to give reasons for disregarding them.

³ Consideration (b) would appear not to be relevant here, given that all potential places of arbitration are in States Parties to the New York Convention.

⁴ Canada correctly points out that a sixth consideration, namely, "perception of a place as being neutral," was eliminated from an earlier draft of the Notes as being "unclear, potentially confusing" although something that a tribunal "might wish to discuss...with the parties." Report of the United Nations Commission on International Trade Law on the work at its twenty-eighth session (Vienna, 2-26 May 1995), U.N. Doc. A/50/17, paragraph 337, reprinted in Vol. XXVI UNCITRAL Yearbook (1995).

set. It urges (at page 5 of its Memorandum of October 2, 1997), first, that Article 16(1) of the UNCITRAL Rules "permits the Tribunal to take into account certain general, universally applied considerations which usually are found in the doctrine of forum conveniens," which "provides that the forum in which to try a matter should be the jurisdiction that has the closest connection with the action and the parties." Canada then proceeds (at page 7 of its Memorandum of October 2, 1997) to list factors "which most directly connect [this arbitration] to Ottawa." Leaving aside the issue as to whether that municipal law doctrine has a place in international arbitration, the Tribunal is constrained to say that in its view its decision regarding the place of arbitration in this case must be made, as Article 16(1) prescribes, "having regard to the circumstances of the arbitration," meaning all such circumstances, including those elements offered for consideration in paragraph 22 of the Notes, and without any individual circumstance being accorded paramount weight irrespective of its comparative merits. In the end, Canada appears to agree, having stated (at paragraph 3 of its Reply Memorandum of October 22, 1997) that it cited the doctrine "only to demonstrate that the criteria which provide guidance in determining the appropriate forum appear to be practically the same criteria which are cited in the UNCITRAL Notes...."

Canada then argues (at pages 8-9 of its Memorandum of October 2, 1997), second, that since under NAFTA Chapter 20 (Rule 22 of the Model Rules of Procedure for NAFTA) the place of arbitration of a State-to-State NAFTA arbitration is the capital of the respondent State, "[a] fortiori, where a private commercial party brings a complaint under Chapter 11, it should follow that the circumstances of the case lend themselves to the government of a sovereign country responding in its own capital." The Tribunal does not share this view. The fact that the respondent State's capital has been expressly designated by rule adopted pursuant to Chapter 20 would suggest, to the contrary, that the omission to do so in connection with Chapter 11 was, if anything, deliberate. In any event, NAFTA's Chapter 11 clearly contemplates the possibility of disputes under it against any NAFTA Party being arbitrated in Washington, DC, since Article 1120 allows a

disputing investor to choose arbitration (if and when it becomes available⁵) under the ICSID Convention, Article 62 of which provides that in the absence of agreement of the arbitrating parties "arbitration proceedings shall be held at the seat of the Centre" i.e., Washington, DC.⁶

Having disposed of these threshold issues, the Tribunal now turns its attention to the four factors relevant under the UNCITRAL Notes, considering each of them in relation to the respective proposed places of arbitration: Ottawa (or, alternatively, Toronto) and New York City.⁷

As to criterion (a) of the Notes - "suitability of the law on arbitral procedure" - the Tribunal concludes that all proposed fora are equally suitable. It appears undisputed that Canada's Commercial Arbitration Act is based on the UNCITRAL Model Law on International Commercial Arbitration and by its terms would apply to this arbitration under NAFTA Chapter 11. It appears to be equally undisputed that the relevant laws of the United States, and, to the extent relevant, the State of New York, are no less suitable. The fact that the laws applicable to this arbitration, were it situated in New York City, have been in place longer than Canada's Commercial Arbitration Act, and therefore are judicially more elaborated, does not, in the view of the Tribunal, significantly affect their comparative

⁵ To date neither Canada nor Mexico is a party to the ICSID Convention. Thus although the United States is a party to that Convention no present prospect of such an arbitration exists. Under Articles 20 and 21 of the ICSID Additional Facility Arbitration Rules, to which Article 1120 also allows resort, "the place of arbitration shall be determined by the Arbitral Tribunal after consultation with the parties and the Secretariat" and must be in a State Party to the New York Convention.

⁶ ICSID Convention Article 2 fixes the seat of the Centre at "the principal office" of the World Bank, i.e., Washington, DC. While it is true, as Canada has noted (at paragraph 6 of its Reply Memorandum of October 22, 1997), that Washington, DC is not thereby the "place of arbitration," that concept itself is not relevant to the self-contained ICSID system.

⁷ The Tribunal, as previously noted, has the power, under NAFTA Article 1130(b), to select as the place of arbitration any situs in Canada, Mexico or the United States. The Tribunal notes that Ethyl (at page 5 of its Submission of October 16, 1997) has "submitted that if this Tribunal finds that it is inappropriate to have the place of arbitration in either Canada or the United States, the Claimant suggests that the place of arbitration be in Mexico." The Tribunal limits itself in this case, however, to the sites recommended by the parties. In doing so it emphasizes that it is in no way precluded by the parties' respective proposals from considering other locations. It proceeds as it does because it believes the parties objectively have searched out those places that are most likely in fact to be most appropriate, "having regard to the circumstances of the arbitration."

suitability.

Criterion (c) of the Notes⁸ - "the convenience of the parties and the arbitrators, including the travel distances" - likewise seems not to be significantly better served by one proposed alternative as opposed to any other. As to the Tribunal, the President, who normally is resident in Cologne, Germany, can travel with more or less equal ease to New York City, Ottawa and Toronto. Mr. Lalonde, a resident of Montreal, can travel to Ottawa or Toronto just as well as Judge Brower can from his Washington, DC residence to New York City. By the same token, Judge Brower would be no more and no less inconvenienced by travel to Ottawa or Toronto than would Mr. Lalonde be by the need to appear in New York City.⁹

The situation of the parties is substantially similar. Canada has noted (at page 12 of its Memorandum of October 2, 1997) that:

The investment which Ethyl Corporation alleges has been damaged is the wholly owned subsidiary, Ethyl Canada, which has its head office in Mississauga, adjoining the City of Toronto, in the Province of Ontario. Its blending facility, where it processes MMT, is in Corunna, in the Province of Ontario.

In response to this Ethyl simply contends (at page 4 of its Submission of October 16, 1997) that it has "its head office in [the Commonwealth of] Virginia" and that the "location of subsidiary offices is not a relevant factor for this arbitration." For purposes of criterion (c) alone this may well be correct. If it is, there is no significant difference in the convenience factor between Canada having to travel to New York City and Ethyl having to be present in Ottawa or Toronto. If it is not, then a degree of preference would be indicated for a Canadian venue.

-
- The Tribunal already has determined that criterion (b) - "whether there is a multilateral or bilateral treaty on enforcement of arbitral awards between the State where the arbitration takes place and the State or States where the award may have to be enforced" - is not "relevant here." See note 3, *supra*.
 - The Tribunal does not believe, as Ethyl has suggested (at page 4 of its Submission of October 16, 1997), that in determining the "convenience of the...arbitrators" it is relevant that "local offices of the law firms of both Messrs. Lalonde and Brower" exist in New York City.

Canada has introduced as a consideration the location of counsel to the parties, emphasizing that Ethyl's counsel has an office in Toronto as well as in New York City. Ethyl disputes the relevance of counsel's convenience, while nonetheless pointing out (at page 3 of its Submission of October 16, 1997) that "The Government of Canada also maintains a large consulate in New York City as well as a Permanent Mission to the United Nations which can support the needs of the Government of Canada's legal team...." Canada terms this latter assertion "incorrect," as "[t]hese are diplomatic offices and are not set up to act as alternative legal offices, such as [Claimant's counsel] apparently has available to him."¹⁰

The Tribunal is inclined to the view that the convenience of counsel is a relevant consideration, subsumed under the "convenience of the parties." Certainly the convenience of attorneys appointed by the parties, which translates into cost factors, affects their clients. The Tribunal also believes that the availability for temporary use by government lawyers of facilities at a consular post or diplomatic mission is not comparable to a dedicated office of counsel. Accordingly, the Tribunal concludes that it is relevant to consider that fixing the place of arbitration in either Ottawa or Toronto will serve the convenience of counsel collectively better than New York City.

We now turn to criterion (d), "availability and cost of support services needed." It is clear that all necessary support services for this arbitration are available in all three of the cities that have been proposed. The Tribunal believes it appropriate to take judicial notice of the fact that such services inevitably will be more costly in New York City than in either Ottawa or Toronto. This includes transportation, hotels, meal service, hearing rooms and counsel rooms, and certified stenographic reporting services. Therefore application of criterion (d) favors Ottawa or Toronto over New York City, but does not discriminate between them.

The Tribunal does not, however, take into consideration in this regard, as

¹⁰ As regards Ethyl's counsel this point would appear to apply equally to New York City and Toronto

Canada has proposed, the presence and availability in Ottawa of NAFTA Secretariat facilities. As Canada itself records (at page 7 of its Reply Memorandum of October 22, 1997), "The NAFTA Secretariat operates in all three NAFTA countries, each of which funds the local office." (Emphasis added.) While the Tribunal accepts fully, as Canada itself has stressed (at page 7 of its Reply Memorandum of October 22, 1997), that "those offices operate independently of their host country and are viewed by the NAFTA Parties as neutral centres," the Tribunal nonetheless is concerned that to avail itself of such facilities could be viewed as inconsistent with at least the spirit of the requirement of the UNCITRAL Rules (Articles 9-10) that it act so as to leave no doubt whatsoever as to its complete independence of any party. This is all the more so where, as here, Ethyl has registered its objection (at page 5 of its Submission of October 16, 1997) that the use of such facilities "would be inappropriate."

The last criterion of the Notes - "(e) location of the subject-matter in dispute and proximity of evidence" - finally turns the Tribunal definitely to selection of a place of arbitration in Canada. Clearly the subject-matter in dispute is fixed in Canada. Ethyl charges (see page 4 of its Notice of Arbitration) that certain legislative and other acts of Canada "remov[ing] MMT [methylcyclopentadienyl manganese tricarbonyl] from Canadian gasoline" have resulted in breaches by Canada of Articles 1102, 1106 and 1110 of NAFTA, thereby "harm[ing] Ethyl Corporation and the value of its Canadian investment, Ethyl Canada." The "location of the subject-matter in dispute" is not subject to serious debate.

The parties have little to say as regards "the proximity of evidence." Perhaps the nature of the case and the early stage in which it now is make it difficult to be explicit on this subject. For its part, Canada has said (at page 7 of its Memorandum of October 2, 1997) only that "virtually the whole of the cause of action in this case relates to Canadian laws, the Canadian law-making process, the actions of the Canadian Parliament and certain ministers," and that it "should be evident...that the witnesses to this process of law-making and policy-making are for

the most part located in Ottawa."¹¹ In response Ethyl effectively asserts (at page 5 of its Submission of October 16, 1997) that no such witnesses will be required, as it "intends to provide proof of statements made by Canadian officials through the introduction of authoritative writings, such as Hansard," which the Tribunal understands to be the official record of debates in the Canadian Parliament. In reply, Canada argues (at page 6 of its Reply Memorandum of October 22, 1997) that "it is potentially the whole process of law making and parliamentary procedure and practice which is to be examined through the evidence of witnesses". In affirmative support of New York City as the place of arbitration Ethyl states only that, "[a]s an example, all important documents on the issue of damages are located in Richmond, Virginia," where its headquarters are situated. Thus the Tribunal is afforded little insight into just how any considerations of the proximity of evidence should affect its decision.

Traditionally arbitrating parties, desiring both the reality and the appearance of a neutral forum, incline to agree on a place of arbitration outside their respective national jurisdictions. This is especially the case where a sovereign party is involved. Where an arbitral institution or a tribunal must make the selection, this tendency is, if anything, even greater, and for the same reasons. Article 16(1) of the UNCITRAL Rules easily accommodates this consideration as one of the "circumstances of the arbitration."

Here, however, NAFTA Article 1130(b) circumscribes our powers, limiting possible places of arbitration to either of the two States here involved or Mexico. A Mexican venue surely would represent neutrality in this case, and in all such cases. The Tribunal concludes, however, that had the NAFTA Parties felt that every arbitration under Chapter 11 of NAFTA must be sited in the NAFTA Party

¹¹ Canada argues (at pages 9-11 of its Memorandum of October 2, 1997) also that certain "related proceedings" are "additional factors that point to Canada as the appropriate place of arbitration...." Those proceedings are (1) a suit by Ethyl's Canadian subsidiary seeking "a declaration...that [the relevant legislation] is of no legal force and effect" as well as injunctive relief, and (2) a formal complaint by the Province of Alberta against Canada which will be subject to dispute resolution proceedings. The Tribunal does not believe that the pendency of those proceedings has any bearing on its determination of the place of arbitration.

not involved in the dispute they would have said so and would not have remitted us to Article 16(1) of the UNCITRAL Rules. The Tribunal has readily concluded that a Mexican venue would not serve other important "circumstances" of this arbitration.¹²

The Tribunal concludes on the basis of all of the foregoing that, on balance, the place of arbitration should be in Canada. Although as to a number of the "circumstances of the arbitration," notably the respective suitability of the law on arbitral procedure and the convenience of the arbitrators, all three cities in contention are equally appropriate, other circumstances weigh in favor of Canada and none point toward New York City. Most significantly, Canada indisputably is the location of the subject-matter in dispute. In addition, a Canadian venue offers less costly support services and overall would better suit the convenience of counsel for the parties. It is far less certain, but likely, that Canada overall is more convenient for the parties themselves and as regards the proximity of evidence. In the end, therefore, the Tribunal finds a Canadian venue more appropriate as the place of arbitration in this case than New York City.

Once the Tribunal has determined to select a Canadian venue, none of the specific factors considered weighs strongly in favor of Toronto, Canada's alternative proposal, rather than Ottawa. The Tribunal has some reluctance, however, to choose Ottawa. This is due to the fact that it is the capital of Canada.

The Tribunal therefore has determined to designate Toronto as the place of arbitration, for the reason that while it is no more, and no less, appropriate than Ottawa when measured by the other applicable criteria, it is likely to be perceived as a more "neutral" forum.

¹² The fact that the UNCITRAL Notes omitted (see note 4, *supra*) "perception of a place as being neutral" from its list of criteria for selection of a place of arbitration because it was "unclear, potentially confusing" does not mean that such criterion cannot be considered. UNCITRAL, in taking this step, itself indicated "that the arbitral tribunal, before deciding on the place of arbitration, might wish to discuss that with the parties."

Signed by the members of the Tribunal:

Charles N. Brower: Charles N. Brower

Marc Lalonde: Marc Lalonde

Karl-Heinz Böckstiegel Karl-Heinz Böckstiegel

Date of last signature: November 28, 1997

PROF. DR. JUR. KARL-HEINZ BÖCKSTIEGEL

By Fax and Mail

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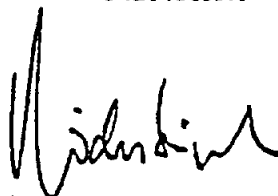
18 December 1997

cc: Mr. Charles N. Brower, Washington - Fax No. 001 202 639 8355
Mr. Marc Lalonde - Fax No. 001 514 397 3222 .

Re.: NAFTA / UNCITRAL Case
Ethyl Corp. v. Government of Canada

Procedural Order

In response to the question raised by the Government of Canada in its letter dated 17 December 1997 regarding disclosures about decisions of the Tribunal, the Tribunal confirms the understanding as expressed in that letter.



Karl-Heinz Böckstiegel
Chairman of Tribunal

Department of Foreign Affairs
and International Trade
Department of Justice



Ministère des Affaires étrangères
et du Commerce international
Ministère de la Justice

125 Sussex Drive
Ottawa, Ontario K1A 0G2

December 17, 1997

Professor Karl-Heinz Böckstiegel
Parkstrasse 38
D-51427 Bergisch-Gladbach
Frankenforst, Germany

Charles N. Brower
White & Case
601 Thirteenth Street, N.W.
Suite 600 South
Washington, D.C. 20005-3807

Marc Lalonde
Stikeman Elliot
Suite 4000
1155 René-Lévesque Blvd. West
Montreal, P.Q. H3B 3V2

Dear Sirs:

Re: Ethyl Corporation v. Government of Canada

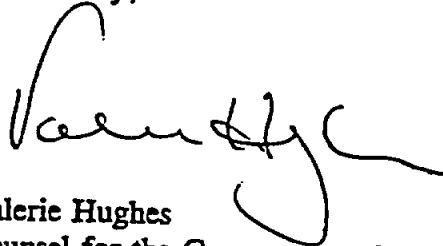
This will confirm that the Government of Canada has received the Decision of the Tribunal dated November 28, 1997, on the place of arbitration.

The Government of Canada notes that at the meeting with the Tribunal held on October 2, 1997, it was agreed that procedural matters, such as the membership of the Tribunal, the fact that an organizational meeting had been held, and procedural and scheduling matters, could be made public. The substance of the discussion, however, was not to be disclosed to the public.

Numerous inquiries have been received by the Government of Canada about the place of arbitration. Ministers have a responsibility to respond to public inquiries with as much transparency as possible. In our view, it would be in keeping with the Tribunal's instructions to disclose that the Tribunal has made a decision as to the place of arbitration and to indicate that the place is Toronto. The reasons for the decision, however, would not be disclosed.

The Government of Canada would appreciate it if the Tribunal would confirm that our understanding of the Tribunal's directions on this matter is correct. We do not propose to release any information on the place of arbitration until we receive the Tribunal's further advice.

Yours truly,

A handwritten signature in black ink, appearing to read 'Valerie Hughes', with a large, sweeping flourish at the end.

Valerie Hughes
Counsel for the Government of Canada

c.c. Barry Appleton

PROF. DR. JUR. KARL-HEINZ BÖCKSTIEGEL

By Fax and Mail

Fax No. 001 416 966 8801

001 613 844 0027

Mr. Barry Appleton
Appleton & Associates
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Canada

Ms. Valerie Hughes
General Counsel
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125 Sussex Drive
Ottawa, Ontario K1A 0G2
Canada

22 January 1998

cc: Mr. Charles N. Brower, Washington - Fax No. 001 202 638 8355
Mr. Marc Lalonde - Fax No. 001 514 397 3222

Re.: NAFTA / UNCITRAL Case
Ethyl Corp. v. Government of Canada

Procedural Order

1. The Tribunal refers to and confirms its Procedural Orders of 13 October and 1 December 1997 and its Decision Regarding the Place of Arbitration of 1 December 1997. The Tribunal takes into account the telephone consultation the Chairman has had with both Parties regarding the logistics of the Hearing on Jurisdiction.
2. The Tribunal notes that it has not yet received any information or requests from the Parties regarding confidentiality and evidence in accordance with sections 9c and 11 of the Procedural Order of 13 October 1997. The Tribunal nonetheless intends to go forward with the Hearing at the dates agreed with the Parties, namely 24 and 25 February 1998. Insofar as the Parties have not dealt with this in their previous submissions and intend to ask for a ruling by the Tribunal at the Hearing in this regard, each Party may file a short submission not later than 17 February to inform the Tribunal about the relevant issues.
3. The Parties are hereby invited to a
 - Hearing at the
King Edward Hotel
37 King Street East
Toronto, Ontario M5C 1E9
Tel.No. (416) 863 8700
Fax No. (416) 367 5515
starting on 24 February 1998 at 9.00 a.m.
ending at the latest in the evening of 25 February 1998.

- 2 -

4. The Hearing shall be restricted to issues of jurisdiction, but should deal with all such issues of jurisdiction on the basis of the submissions, documents and written statements filed by the Parties in accordance with Sections 8 a, b, c, and d of the Procedural Order of 13 October 1997.
5. The Hearing shall include any examination and cross-examination of witnesses whom the Parties may wish to be heard. Such examination shall be made on the basis of the written witness statements and the list of witnesses submitted by the Parties in accordance with Sections 8 c, d, and f of the Procedural Order of 13 October 1997.
6. At the Hearing the Parties shall not engage in a repetition of all of the arguments and evidence already submitted in writing, but instead highlight and discuss major factual and legal issues.
7. The Tribunal recalls Section 6 of the Procedural Order of 13 October 1997 requiring information from the Parties before 10 February 1997 regarding the arrangements made for a recording and transcript of the Hearing. The Tribunal requests the Parties to assure in such arrangements that the transcript be provided to the Tribunal either the next day or in any case not later than one week after the Hearing as the Tribunal intends to finalize its deliberations for its award on jurisdiction by the middle of March 1998.
8. Conduct of the Hearing:

Taking into account the telephone consultations by the Chairman with both Parties, in order to enable the Parties to prepare themselves as well as possible for the Hearing, the Tribunal informs the Parties in advance of the following details:

- a.) The Tribunal establishes the following Agenda for the Hearing:

- | | | |
|----------|--------|---|
| 1st day: | (i) | Introduction by the Chairman |
| | (ii) | Introductory statements by both Parties regarding burden of proof and confidentiality |
| | (iii) | First round presentation by Respondent |
| | (iv) | First round presentation by Claimant |
| | (v) | Questions by Arbitrators |
| 2nd day: | (vi) | Answering presentation by Respondent |
| | (vii) | Answering presentation by Claimant |
| | (viii) | Further questions by Arbitrators, if any. |

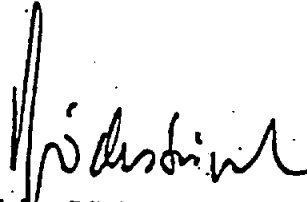
- b.) In order to provide equal opportunity for both Parties during the two days of the Hearing, the following time frame is established:

Each Party shall have a maximum of 3 hours for its presentations on the first day and a maximum of 1,5 hours for its presentations on the 2nd day, after deduction of time for breaks and other business. Each side is

- 3 -

free to determine how much time it will spend on the presentation of evidence, including witnesses, and on arguments respectively. Time used by a Party examining witnesses presented by the other Party shall be deducted from the time allotted to the examining Party.

8. Should a Party have any further questions regarding the arrangements at the site of the Hearing, it may directly contact Arbitrator Marc Lalonde who has been kind enough to make the reservations at King Edward Hotel through his office.



Karl-Heinz Böckstiegel
Chairman of Tribunal

PROF. DR. JUR. KARL-HEINZ BÖCKSTIEGEL

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General Counsel
Trade and Law Division
Department of Foreign Affairs and
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125 Sussex Drive
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26 January-1998

cc: Mr. Charles N. Brower, Washington - Fax No. 001 202 639 9355
Mr. Marc Lalonde - Fax No. 001 514 397 3222

Re.: NAFTA / UNCITRAL Case
Ethyl Corp. v. Government of Canada

Procedural Order

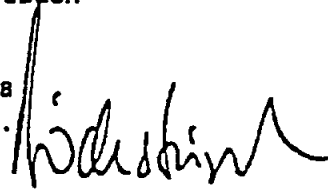
The Tribunal has examined the present situation regarding the advance payments made by the Parties and the expenses and fees that have occurred up to now and can be estimated to occur including the Hearing in February, an internal deliberative meeting of Tribunal members, and work required to issue the decision on jurisdiction.

Enclosed please find a calculation in this regard.

On this basis, to assure that sufficient advance payments are available before the Hearing in Toronto,

each Party is requested
to transfer US \$ 75,000.00
at the latest by 18 February 1998
to the trust account of the Chairman:

Prof. Dr. Karl-Heinz Böckstiegel
Account No. (410) 65 65 782
Deutsche Bank Bergisch Gladbach
BLZ 370 700 80
Germany
Re.: Arbitration Ethyl/Canada



Karl-Heinz Böckstiegel
Chairman of Tribunal

C. Total Estimated Expenses and Fees
start of Procedure to
Issue of Decision on Jurisdiction:

US \$ 251,122.13

D. Calculation of Advance payments:

Total estimated expenses and fees
start of procedure to issue of
decision on jurisdiction (see C. above)

251,122.13

Advance Payments received:

from Ethyl September 1997
from Canada October 1997

50,000.00
50,000.00

Further advance payment required:

151,122.13

Requested by Procedural Order January 1998:

Each Party: US \$ 75,000.00

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16 March 1998

cc: Mr. Charles N. Brower, Washington - Fax No. 001 202 639 9355
Mr. Marc Lalonde - Fax No. 001 514 397 3222

Re.: NAFTA / UNCITRAL Case
Ethyl Corp. v. Government of Canada

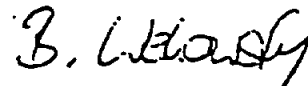
Procedural Order

The Tribunal has taken note of the submission of the Government of the United States of Mexico dated 11 March 1998 as well as of the communications exchanged among the NAFTA Parties relating to this case.

The Tribunal accepts the submission of the Government of the United States of Mexico.

The Claimant and the Respondent may submit any comments they have in this regard at the latest by 1 April 1998.

Karl-Heinz Böckstiegel
Chairman of Tribunal



Dictated by Prof. Böckstiegel and signed in his absence: Birgit Wehowsky (Secretary)

PROF. DR. JUR. KARL-HEINZ BÖCKSTIEGEL

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Department of Foreign Affairs and
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cc: Mr. Charles N. Brower, Washington - Fax No. 001 202 639 9355
Mr. Marc Lalonde - Fax No. 001 514 397 3222

Re.: NAFTA / UNCITRAL Case
Ethyl Corp. v. Government of Canada

Procedural Order

1. Award on Jurisdiction

Enclosed to the courier version of this communication is the Tribunal's Award on Jurisdiction of 24 June 1998. The text is not bound to facilitate the production of further copies.

2. Order on Confidentiality

The Tribunal is presently in the process of finalizing its Procedural Order on Confidentiality on the basis of the text agreed between the Parties and of the discussion during the Hearing in Toronto.

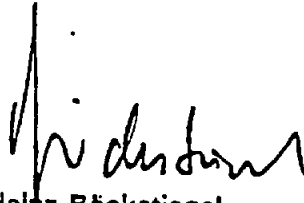
3. Further Procedure

To give the Parties the opportunity to sufficiently study the Award on Jurisdiction, the Tribunal intends to contact the Parties not earlier than Monday 6 July 1998 regarding a consultation on the further procedure. However, the following indication might be helpful for the Parties to prepare for such consultation:

- The Tribunal intends to bifurcate the further procedure leading first to a Hearing on Liability and only thereafter to a Hearing on Quantum.
- The major steps in the first section of this bifurcated procedure might be:
 1. Submission by Claimant on Liability including all documents and witness statements.

- 2 -

2. Submission by Respondent on Liability including all documents and witness statements.
3. Submission by Claimant responding to the submission under 2.
4. Submission by Respondent responding to the submission under 3.
5. Hearing on Liability.



Karl-Heinz Böckstiegel
Chairman of Tribunal

PROF. DR. JUR. KARL-HEINZ BÖCKSTIEGEL

By Fax and Mail

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cc: Mr. Charles N. Brower, Washington - Fax No. 001 202 639 9355
Mr. Marc Lalonde - Fax No. 001 514 397 3222

Re.: NAFTA / UNCITRAL Case
Ethyl Corp. v. Government of Canada

Procedural Order

The Tribunal refers to its Procedural Order of 13 October 1997, Section 9, and the discussion on confidentiality during the Hearing in Toronto on 24 February 1998 (Transcript I, p.13-38).

1. Confidential Business Information

The Tribunal accepts and hereby incorporates the enclosed texts agreed between the Parties:

- Style of Cause
- Appendix "A" Confidentiality Agreement
- Schedule A form.

2. Hearings, Transcripts of Hearings, Submissions

2.1. In accordance with UNCITRAL Rule 24.4 Hearings shall be held in camera unless the Parties agree otherwise.

2.2. Transcripts of Hearings and Submissions by the Parties to the Tribunal (except those mentioned in section 2.3. below) shall be kept confidential and may only be disclosed under the conditions established for "Protected Documents" according to Section I above.

2.3. The following submissions containing constitutive pleadings may be disclosed to third parties or published:

- The Notice of Intent
- The Notice of Arbitration
- The Statement of Claim
- The Statement of Defence

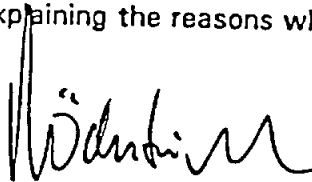
3. Decisions of the Tribunal

3.1. According to NAFTA Art. 1137.4 and its Annex 1137.4, awards may be published by either Party. This includes not only the final award, but also partial and preliminary awards such as the Award on Jurisdiction issued by the Tribunal.

3.2. Other Decisions of the Tribunal, including the Decision Regarding the Place of Arbitration, may as well be disclosed or published. This also applies to Procedural Orders of the Tribunal unless they contain information which is to be treated confidential according to Sections 1 or 2 above.

4. Specific Applications by Parties

If a Party considers that certain documents and information should be treated different from what is ruled in Sections 1 to 3 above, it may submit an application to the Tribunal to that effect and explaining the reasons why it considers such different treatment necessary.



Karl-Heinz Böckstiegel
Chairman of Tribunal

STYLE OF CAUSE

1. Subject to NAFTA Article 1129, no document over which business confidentiality has been claimed in these proceedings between Ethyl Corporation and the Government of Canada (hereinafter referred to as "Protected Documents"), or information recorded in those documents, shall be disclosed except in accordance with the terms of this Order or with prior written consent of the person that claimed business confidentiality over the document.
2. If any person in possession of a Protected Document receives a request pursuant to law to disclose a Protected Document or information contained therein, that person shall give prompt written notice to the party that claimed confidentiality over the document so that party may seek a protective order or other appropriate remedy. Such notice shall be provided not less than thirty (30) days before disclosure unless the law requires disclosure in a shorter period of time.
3. The party claiming confidentiality shall clearly identify each Protected Document with the notation 'CONFIDENTIAL BUSINESS INFORMATION. SUBJECT TO PROTECTIVE ORDER. UNAUTHORIZED DISCLOSURE PROHIBITED.'
4. Protected Documents identified by the parties and information recorded in those Protected Documents may be used only in these proceedings between Ethyl Corporation and the Government of Canada and may be disclosed only for such purposes to and among:
 - (a) counsel whose involvement in the preparation or conduct of these proceedings is reasonably necessary;
 - (b) officials or employees of the parties whose involvement in the preparation or conduct of these proceedings is reasonably necessary;
 - (c) independent experts or consultants retained or consulted by the parties in connection with these proceedings; and
 - (d) witnesses who in good faith are reasonably expected to offer evidence in these proceedings and only to the extent material to their expected testimony.
5. All persons receiving Protected Documents shall be governed by this Order. Each party shall have the obligation of notifying all independent experts, consultants and witnesses retained by such parties of the obligations of this Order. The obligations created by this Order shall survive the termination of these proceedings.

6. This Order is binding on all persons receiving Protected Documents pursuant to paragraphs 4(a) and (b) of this Order. The party making disclosure pursuant to paragraph 4(a) and (b) of this Order shall take reasonable steps to inform all recipients of Protected Documents of their obligations under this Order.
7. It shall be the responsibility of the party who is to disclose Protected Documents to any person in accordance with paragraphs 4(c) and (d) of this order, to ensure that such person who is to receive Protected Documents, or the information contained therein, executes a Confidentiality Agreement in the form attached as Appendix "A" before gaining access to any Protected Document. Each such Confidentiality Agreement shall be immediately filed with the President of the Tribunal, who shall keep such Agreement confidential. Where Protected Documents are to be disclosed to a firm, organization, company or group, all employees and consultants of the firm, organization, company or group with access to the Protected Documents, must execute and agree to be bound by the terms of the attached Confidentiality Agreement.
8. At the conclusion of these proceedings, all Protected Documents are to be returned to the party who supplied the Protected Documents, subject to the requirements of the *National Archives of Canada Act*.
9. This Order is without prejudice to any assertion of privilege. In the event the Tribunal orders production of a document for which privilege is claimed, the party asserting privilege may claim the protections available under this Order.
10. Notice pursuant to this Order shall be provided to the Claimant by sending notice by fax to the General Counsel of Ethyl Corporation and to its counsel of record while these proceedings are pending and to the Government of Canada by sending notice by fax to the Deputy Attorney General of Canada (or his or her successor) and to the General Counsel of the Trade Law Division of the Department of Foreign Affairs and International Trade (or his or her successor).
11. This Order shall be subject to further direction of this Tribunal.

APPENDIX "A"

CONFIDENTIALITY AGREEMENT

TO: The Government of Canada (and its legal counsel); and Ethyl Corporation (and its legal counsel)

FROM: [Name]
[Address]
[Affiliation]
[Position]

1. IN CONSIDERATION of being provided with information or documentation ("Protected Documents") in connection with an arbitration between Ethyl Corporation and the Government of Canada over which claims for confidentiality have been advanced, I hereby agree to maintain the confidentiality of such information or documentation. It shall not be copied or disclosed to any other person nor shall the information or documentation so obtained be used by me for any purposes other than in connection with this proceeding.
2. I acknowledge that I am aware of the Order of the Arbitration Tribunal regarding confidentiality, a copy of which is attached as Schedule "A" to this Agreement, and agree to be bound by it.
3. In the event that I am requested to disclose any of the information or documentation, I will provide the General Counsel of Ethyl Corporation and the Government of Canada with advance written notice in conformity with paragraphs 2 and 9 of the attached Order so that the person that claimed confidentiality over such information or documentation may seek a protective order or other appropriate remedy. In any event, I will furnish only that portion of the information or documentation which is legally required and I will exercise my best efforts to obtain reliable assurance that confidential treatment will be accorded to the information or documentation.
4. I will promptly return any Protected Documents received by me to the party that provided me with such Protected Documents, or the information recorded in those Protected Documents, at the conclusion of my involvement in these proceedings. All documents containing information from a Protected Document will be destroyed.
5. I acknowledge and agree that in the event that any of the provisions of this Confidentiality Agreement are not performed by me in accordance with their specific terms or are otherwise breached, that irreparable harm may be caused to either of the parties to this arbitration. I acknowledge and agree that either of the parties to this arbitration is entitled to injunctive relief to prevent breaches of this Confidentiality Agreement and to specifically enforce the terms and provisions hereof in addition to any other remedy to which any party to this arbitration may be entitled at law or in equity. The prevailing party in any such litigation will be entitled to payment of its legal fees and disbursements, court

costs and other expenses of enforcing, defending or otherwise protecting its interests hereunder.

6. I agree to submit to the jurisdiction of the courts of the Province of Ontario (in the case of residents of Canada) and the Commonwealth of Virginia (in the case of residents of the United States of America) to deal with breaches arising under this Agreement.

SIGNED, SEALED AND DELIVERED before a witness this _____ day of _____, 199____.

(Print name)

(Witness)

(Signature)

DR. JUR. KARL-HEINZ BÖCKSTIEGEL
U R G E N T

Parkstraße 38
D - 51427 Bergisch-Gladbach
Frankenforst
Telefon (0212) 4704968

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Ms. Valerie Hughes
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3 July 1998

cc: Mr. Charles N. Brower, Washington - Fax No. 001 202 639 8355
Mr. Marc Lalonde - Fax No. 001 514 397 3222

Re.: NAFTA / UNCITRAL Case
Ethyl Corp. v. Government of Canada

Procedural Order

In follow-up to its Procedural Order of 25 June 1998 the Tribunal now suggests to hold a

telephone conference
between the lead counsels of the Parties
and the members of the Tribunal
on Monday 6 July 1998
at 10 a.m. US / Canada Eastern time
(= 16.00 hrs. German time).

The short notice is due to travel plans of one member of the Tribunal. As I will be travelling all day Friday, I would be grateful if Mr. Appleton and Ms Hughes could let me know as soon as possible today Friday at my university secretariate

Ms Margret Krause
Fax No. ++49 221 470 4968
Tel. No. ++49 221 470 2337


- 1) whether they are available at the suggested time and under which telephone number,
- 2) in case they are not available, whether they would be available
 - a) at any other time between 9 and 12 a.m. on Monday 6 July,
 - b) or, alternatively, on 9, 10 or 13 July between 9 and 12 a.m.

- 2 -

If notices confirming availability next Monday reach Ms Krause before 16.00 hrs. our time today, she will try to book a telephone conference for Monday and confirm this by fax to the Parties and the Arbitrators.

Otherwise we will make the necessary arrangements next week.

Karl-Heinz Böckstiegel
Chairman of Tribunal


Dictated by Prof. Böckstiegel and signed in his absence: Margret Krause (Secretary)

PROF. DR. JUR. KARL-HEINZ BÖCKSTIEGEL

Mr Barry Appleton
c/o Appleton & Associates
Fax 001 416 8158801

Parkstraße 3b
D - 51427 Bergisch-Gladbach
Frankenforst
Telefon (022 04) 6 62 00
Telefax (022 04) 2 18 12

Mr Christopher Wall
c/o Winthrop, Stimson, Putnam & Roberts
Fax 001 202 8338491

8 July 1998

Ms Valerie Hughes
c/o Department of Foreign Affairs
Fax 001 613 9440027

Mr Charles Brower
c/o White & Case
Fax 001 202 6399355

Re: NAFTA/UNCITRAL Case
Ethyl Corp. v. Government of Canada

Mr Marc Lalonde
c/o Stikeman Elliott
Fax 001 514 3973222

Procedural Order

After all participants have agreed to this time, a telephone conference has been booked to discuss the further procedure in this case for:

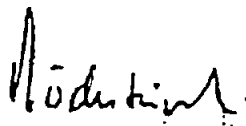
Friday 10 July 1998 at 10 A M US and Canada Eastern Time
which is 3 P M English Time for Mr. Brower
and 4 P M German Time for myself..

You will be called shortly prior to that time at the following telephone numbers:

Mr Appleton 001 416 815 8800
Mr Wall 001 202 7759850
Ms Hughes 001 613 9432803
Mr Lalonde 001 514 4539403
Mr Brower 0044 1985 850125
myself 0049 2204 66268

Please make sure that you are available at that phone connection and that secretaries receiving phone calls are informed

Looking forward to talking to all of you


Karl-Heinz Böckstiegel
Chairman of Tribunal

PROF. DR. JUR. KARL-HEINZ BÖCKSTIEGEL

Mr Barry Appleton
c/o Appleton & Associates
Fax 001 416 8158801

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10 July 1998

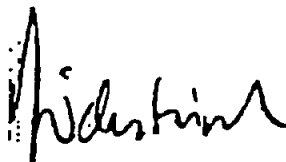
Procedural Order

The Tribunal takes note that the Parties, by their fax letters of 8 and 9 July respectively, have agreed to postpone the telephone conference to Monday 20 July.

As I will not be available during the entire week starting 20 July, I have now booked the telephone conference for Monday 27 July 1998 for the same time and the same phone connections as indicated in the Procedural Order of 8 July 1998.

Could all participants please confirm their availability for that time by fax before 16 July 1998. Please note that I cannot be reached between 17 and 25 July.

Karl-Heinz Böckstiegel
Chairman of Tribunal



PROF. DR. JUR. KARL-HEINZ BÖCKSTIEGEL

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Frankenfort
Telefon (022 04) 6 62 68
Telefax (022 04) 2 18 12

By Fax and By Mail

Fax No. 001 416 815 8801

001 613 944 0027

Mr. Barry Appleton
Appleton & Associates
Royal Trust Tower, Suite 4400, Box 95
Toronto, Ontario M5K 1G8
Canada

Ms. Valerie Hughes
General Counsel
Trade and Law Division
Department of Foreign Affairs and
International Trade
125 Sussex Drive
Ottawa, Ontario K1A 0L1
Canada

Fax No. 001 202 833 8491

Mr. Christopher R. Wall
Winthrop, Stimson, Putnam & Roberts
1133 Connecticut Avenue, N.W.
Washington, D.C. 20036 / USA

27 July 1998

cc: Mr. Charles N. Brower, Washington - Fax No. 001 202 639 9355 (by fax only)
Mr. Marc Lalonde - Fax No. 001 514 397 3222 (by fax only)

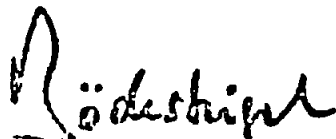
Re.: NAFTA / UNCITRAL Case
Ethyl Corp. v. Government of Canada

Procedural Order

The Tribunal takes note of the fax letters from the Parties dated 22 and 23 July respectively notifying that the Parties have reached a settlement of the dispute and that the telephone conference scheduled for today is no longer necessary.

Accordingly the telephone conference is cancelled.

As soon as all three arbitrators are back from vacations, the requested Order pursuant to Article 34 of the UNCITRAL Arbitration Rules will be issued and the final account of costs will be provided. This will probably be possible in the last week of August 1998.



Karl-Heinz Böckstiegel
Chairman of Tribunal

By Fax and by Courier

PROF. DR. JUR. KARL-HEINZ BÖCKSTIEGEL

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Mr. Barry Appleton
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CanadaMs. Valerie Hughes
General Counsel
Trade and Law Division
Department of Foreign Affairs and
International Trade
125 Sussex Drive
Ottawa, Ontario K1A 0G2
Canadacc: Mr. Charles N. Brower - Only by Fax No. 001 202 639 9355
Mr. Marc Lalonde - Only by Fax No. 001 514 397 3222

21 September 1998

Re.: NAFTA / UNCITRAL Case
Ethyl Corp. v. Government of Canada

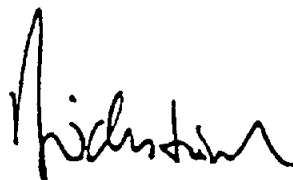
Procedural Order

Enclosed is the Final Statement of Arbitration Costs according to which the amount of US \$ 5,258.21 has to be paid by the Parties to the trust account. As the Tribunal is not aware how the Parties, in their settlement of the case, have agreed to bear the costs up to and after 20 July 1998, the Parties are requested to agree between themselves who will transfer which portion of this final amount due for costs. The transfer should again be made to the trust account of the Chairman:

Prof. Dr. Karl-Heinz Böckstiegel
Account No. (410) 65 65 782
Deutsche Bank Bergisch-Gladbach
BLZ 370 700 60
Germany
Re: Arbitration Ethyl / Canada

After such payments are received the Tribunal will issue the final Order of Termination signed by all three Arbitrators.

All three members of the Tribunal would like to express their appreciation to both Parties and their distinguished counsel for the most efficient professional cooperation they have granted to the Tribunal throughout the conduct of this complex arbitration procedure.

Karl-Heinz Böckstiegel
Chairman of Tribunal

Final Statement of Arbitration Costs

NAFTA / UNCITRAL Case

Ethyl Corp. v. Government of Canada

Statement of Arbitration Costs for the 3 Members of the Tribunal

A. <u>Costs to 15 January 1998:</u> as per Annex to Procedural of 28 January 1998:		70.561,13
B. <u>Costs up to and including 20 July 1998</u> (as requested in faxes of Parties 22 and 23 July 1998)		
I. <u>Expenses</u> (including travel to Hearing 23 - 25 February, deliberative meetings Tribunal 14 March and 8 May)		
1. Transportation		17.885,73
2. Hotel accommodation and subsistence		7.874,12
3. Communications and various office expenses		5.784,11
4. Meeting rooms, refreshments, etc		4.008,80
II. <u>Fees</u>		
1. Total work hours (\$425,-) :	308 h	130.800,00
2. Total travel hours (\$212,5) :	63,5 h	13.493,75
C. <u>Costs after 20 July 1998</u>		
I. <u>Expenses</u> Communications and various office expenses		500,57
II. <u>Fees</u> Total work hours (\$ 425,-) :	10 h	4.250,00
D. <u>Total of all Costs</u>		<u>255.258,21</u>
E. <u>Total Advance Payments by Parties</u>		<u>250.000,00</u>
F. <u>Costs still due from Parties.</u>		5.258,21

PROF. DR. JUR. KARL-HEINZ BÖCKSTIEGEL

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125 Sussex Drive
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Fax No. 001 202 833 8491

Mr. Christopher R. Wall
Winthrop, Stimson, Putnam & Roberts
1133 Connecticut Avenue, N.W.
Washington, D.C. 20036 / USA

9 November 1998

cc: Mr. Charles N. Brower, Washington - Fax No. 001 202 639 9355
Mr. Marc Lalonde - Fax No. 001 514 397 3222

Re.: NAFTA / UNCITRAL Case
Ethyl Corp. v. Government of Canada

Procedural Order

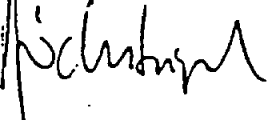
The Tribunal takes note of the recent communications from the Parties and confirms that the outstanding balance of the costs of arbitration indicated in its Order of 21 September 1998 has now been received in the trust account of the Chairman.

In view of this, enclosed please find attached to the courier version of this communication an original for each Party of the Order of Termination signed by all three members of the Tribunal.

The outstanding balance, as indicated in our Order of 21 September, was US \$ 5,258.21. The Parties had agreed to share equally this amount and, accordingly, Ethyl has transferred US \$ 2,629.11. However, the Government of Canada, probably by error, has transferred the full amount of US \$ 5,258.21. The overpayment of US \$ 2,629.11 will, therefore, have to be retransferred to the Government of Canada from the trust account and the Government of Canada is asked to inform the Chairman to which account this retransfer should be made.

As the procedure ends, all three members of the Tribunal would like to reiterate their appreciation to both Parties and their distinguished counsel for the most efficient professional cooperation they have granted to the Tribunal throughout this complex arbitration procedure.

Karl-Heinz Böckstiegel
Chairman of Tribunal



ORDER OF TERMINATION
OF ARBITRAL PROCEEDINGS

in the

NAFTA / UNCITRAL Case

between

Ethyl Corporation (Claimant)

and

The Government of Canada (Respondent)

before

the Tribunal consisting of

Prof. Dr. Karl-Heinz Böckstiegel (Chairman)

Mr. Charles N. Brower (Arbitrator)

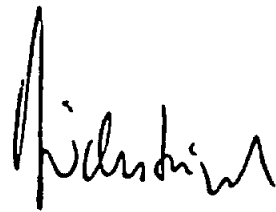
Mr. Marc Lalonde (Arbitrator)

Dated: 9 November 1998

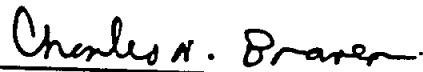
ORDER

Pursuant to Article 34 of the UNCITRAL Arbitration Rules, the Tribunal orders that the arbitral proceedings in the matter of the claim by Ethyl Corporation against the Government of Canada under Chapter Eleven of the North American Free Trade Agreement be and they hereby are terminated forthwith.

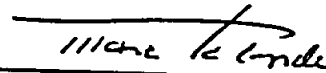
Signed by:



Prof. Dr. Karl-Heinz Böckstiegel
Chairman



Mr. Charles N. Brower
Arbitrator



Mr. Marc Lalonde
Arbitrator