

THE GLOBE AND MAIL 

OTTAWA

Deal confirms government's right to ban 'cosmetic' pesticides, minister says

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Published Friday, May. 27, 2011 09:56PM EDT

Last updated Friday, May. 27, 2011 09:57PM EDT

Governments in Canada can continue restricting so-called "cosmetic" pesticides and weed killers in spite of the settlement of a closely watched NAFTA trade case, federal Trade Minister Ed Fast says.

On Thursday, U.S.-based Dow AgroSciences LLC settled a \$2-million (U.S.) lawsuit stemming from Quebec's 2006 ban of the pesticide 2,4-D, used in products such as Killex.

Dow agreed to drop its case, and in return, Quebec acknowledged that 2,4-D does not "pose an unacceptable risk to human health or the environment."

Mr. Fast said the deal confirms the right of governments to regulate the use of pesticides in Canada.

"This right will not be compromised by Canada's participation in NAFTA or any other trade agreement," he said in a statement on Friday.

Dow, which makes the pesticide, said a deal to drop its North American free trade agreement challenge vindicates its contention that the product is safe if used as directed.

"Quebec's decision never had a basis in science," said Brenda Harris, the company's Calgary-based manager of regulatory and government affairs. "And it cast a shadow on the safety of our product." Ms. Harris said the case is about making sure governments are "transparent in their decision-making."

In a statement, Quebec said its ban remains firmly in place and that 2,4-D continues to be a restricted chemical.

The pesticide 2,4-D is prohibited for lawn care in most provinces east of Manitoba as part of a much broader prohibition on so-called cosmetic lawn care products. The chemical is still widely used in agriculture and forestry. It's also sold for cosmetic uses in the four western provinces and throughout the United States, Europe and Asia.

In justifying the ban, Quebec had initially identified 2,4-D as a possible carcinogen – a claim it failed to demonstrate. And that put the province at odds with Health Canada, which deems the product safe, sparking the company's NAFTA case against the federal government. Claims can only be brought against NAFTA's three signatories – Canada, the United States and Mexico.

Lisa Gue of the David Suzuki Foundation said the settlement would have little effect because even the threat of a NAFTA challenge did not dissuade provinces from banning the chemical. She also suggested the company may have withdrawn its lawsuit because it feared it would ultimately lose the case.

In 2009, Dow filed a challenge under NAFTA's chapter 11, which allows companies to sue governments for actions that affect their investments. The company was seeking \$2-million (U.S.) in damages. No cash was involved in this week's final settlement.

For its part, Quebec agreed to a statement that "products containing 2,4-D do not pose an unacceptable risk to human health or the environment, provided that the instructions on their label are followed."

More significantly, the repudiation of Quebec's health warning helps the company protect a much larger market for the product in farm and forestry use, worth at least \$120-million (Canadian) a year.

The pesticide, used since the 1940s, is popular because it's relatively cheap compared to other newer chemicals that are still protected by patents.

According to Didier Bicchi, the Quebec Ministry of the Environment's director of agriculture and pesticides, 2,4-D will continue to be prohibited in Quebec because the government has found the product to be "non-essential" as a weed killer in the province.

"The Pesticide Management Code remains as is. The ingredient 2,4-D continues to be prohibited in the province. The situation for the company's product hasn't changed. The only difference is that it will no longer be labelled as a dangerous product," Mr. Bicchi said in an interview.

According to the government expert, the settlement may eventually help the company fight a potential ban being considered by other provinces.

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