MEDIA RELEASE
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Dow Agrosciences used and abused NAFTA in pesticide spat, says Council of Canadians

Ottawa – The Council of Canadians is disturbed by preliminary accounts of a settlement between the Government of Canada and Dow Agrosciences in the firm's NAFTA challenge to Quebec's cosmetic pesticide ban. While the Supreme Court decision upholding the legality of provincial and municipal pesticide bans still holds, the very existence of an investor-state dispute settlement process in NAFTA and other trade agreements, with the power to overrule court or government decisions, threatens environmental and public policymaking in Canada, says the organization.

"Dow Agrosciences should never have had the option of challenging Quebec's pesticide ban in front of a private, closed door hearing. Why should unelected, secretive NAFTA trade panels have any say on whether environmental policies are legitimate or not?" asks Maude Barlow, national chairperson with the Council of Canadians. "These are decisions that must be made democratically by local, provincial or national governments, without fear that important environmental measures will be challenged by foreign investors."

In 2009, Dow Agrosciences sued the federal government using NAFTA's investor-state dispute process over Quebec's ban on the residential use of pesticides. The U.S.-based company, maker of the herbicide 2,4-D, claimed $2 million in damages from the ban, which it called tantamount to expropriation. Yesterday's settlement did not involve a payout to Dow, but the Quebec government has apparently 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."

While the pesticide bans in Quebec and other jurisdictions will stay in place, Dow Agrosciences declared the settlement a victory, as commentators note the NAFTA case may discourage other Canadian governments at the local or provincial level from moving ahead with their own bans. The case proves yet again that NAFTA's investment protections offer little of public value, while granting corporations extra-constitutional rights to challenge environmental or public health rules which they believe interfere with profits.

The Australian government decided this year not to include investor-state dispute settlement in its bilateral and multilateral free trade agreements. Its new trade policy states, "Foreign businesses investing in Australia will be entitled to the same legal protections as domestic businesses but the Gillard Government will not confer greater rights on foreign businesses through investor-state dispute resolution provisions."

The Gillard trade policy reasonably concludes that Australia's legal system can handle investment disputes at home, and, "If Australian businesses are concerned about sovereign risk in Australian trading partner countries, they will need to make their own assessments about whether they want to commit to investing in those countries." Governments in Ecuador and elsewhere in Latin America are also cancelling bilateral investment treaties with developed countries for the way foreign firms, including Canadian resource companies, use them to challenge environmental and development-related policy.

"If Canada took the same position as these countries, we might have avoided paying $130 million to AbitibiBowater last year when the firm sued the federal government under NAFTA instead of going through domestic courts," says Stuart Trew, trade campaigner with the Council of Canadians. "We should take a page from the Australian government by reviewing the investor-state process in NAFTA and other trade deals to see if the costs have outweighed the benefits. At home and abroad, the evidence shows investor-state disputes are a regressive corporate tool with no public value."

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