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NAFTA threat won't stop Quebec ban on lawn pesticides

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Presented by



Chris Wattie/Reuters

OTTAWA -- Trade Minister Stockwell Day vows a "vigorous defence" of Quebec's ban on lawn pesticides containing 2,4-D from a challenge by a U.S. chemical company through the North American Free Trade Agreement.

Dow AgroSciences is to decide within a few weeks whether to go ahead with a threatened claim through NAFTA for \$2 million, just as Ontario is introducing similar pesticide controls that put 2,4-D on a ban list.

In written comments to Canwest News Service, Mr. Day said the government, in consultation with Quebec, is assessing Dow's claim after a Jan. 13 meeting of lawyers for all three parties.

"Should this claim proceed, the government of Canada will continue to work with the government of Quebec to vigorously defend our interests," Mr. Day said.

"The NAFTA preserves the state's ability to regulate in the public interest including issues concerning public health and environmental issues related to pesticides."

While the federal government would defend Quebec, it is in an awkward position because the federal Health Canada pest management regulatory agency declared 2,4-D safe, if used as directed.

That finding is at the heart of Dow's case. Dow says Quebec's ban is not driven by science but by "political, social or cultural considerations" and the province has broken a promise to review the "precautionary" ban after the federal pest agency review was complete.

"Basically we filed this notice to protect our rights under those provisions of NAFTA but we continue to hope that the Quebec government will review the decision," Claude Andre Lachance, director of public policy for parent company Dow Chemical Canada, said in an interview.

"That's basically what we want. So the issue is not about compensation. The issue is not about commercial interests. The issue is about due process."

A spokesman for Quebec's Environment Ministry said there is no comment on Dow's call for a review of the ban or on the NAFTA case.

The case has attracted attention of MPs of all parties at the House of Commons trade committee, sparking a hearing last week into Chapter 11 investment provisions of the free trade agreement between Canada, the United States and Mexico.

New Democratic Party MP Peter Julian, who instigated the hearing, said he suspects the government will settle out of court and/or ask Quebec to reverse its ban, despite Mr. Day's comments. Mr. Julian said the case would likely expose the outdated nature and general weakness of Chapter 11.

"The question is whether a company can use Chapter 11 to override a decision made by a democratic government in the best interests of the citizens," Mr. Julian said in an interview. "This is really the principle that's at stake."

"If a company can say our profits have been infringed so we're going to force you off this ban of our product, regardless of the consequences, then this opens up a whole avenue (to challenge) pesticide bans and a whole range of toxic products."

Mr. Lachance said meetings among lawyers for all three parties were "absolutely not" for out-of-court settlement negotiations but for discussions on procedures and issues so the NAFTA arbitrators will be well informed.

Will Amos, staff lawyer for the University of Ottawa's Ecojustice Environmental Law Clinic, said he is pleased by Mr. Day's pledge.

"I'm hopeful they'll advance the strongest arguments possible," he said, adding he will apply to make a submission to the three-member NAFTA arbitration panel.

The Environmental Law Association has cited the Dow case in calling for amendment, if not repeal, of Chapter 11. It cites more modern trade agreements between the United States and other countries that provide explicit protection of environmental, health or safety regulations from being subject of investor compensation claims.

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