

Feds fear loss on MMT

Trade showdown with Ethyl to rule on import ban

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The Liberal cabinet is increasingly worried it will lose a NAFTA panel decision on its ban of the gasoline additive MMT, a ruling that could cost taxpayers hundreds of millions of dollars and hand a potent weapon to anti-free-trade advocates.

U.S.-based Ethyl Corp., which manufactures the additive, launched a complaint in April under the North American free-trade agreement, claiming the Canadian government had expropriated its business when it banned the importation of the legal substance.

Ethyl of Richmond, Va., has claimed \$350-million (U.S.) in damages.

Yesterday, a spokeswoman for International Trade Minister Sergio Marchi confirmed that a NAFTA panel, which operates in secret, ruled two weeks ago that Ethyl's claim can proceed to a full hearing.

A highly placed Liberal source said the cabinet has been warned by government lawyers that Ottawa does not have a good case. "People are very worried."

Industry sources say the government has approached Ethyl about a settlement but, so far, without success.

Canada had claimed the panel did not have jurisdiction because Ethyl did not follow proper procedures in filing the action when it bypassed the U.S. government and launched the complaint on its own.

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"The panel ruled it has jurisdiction to proceed with the arbitration and to consider Ethyl's claim," said Leslie Swartman, Mr. Marchi's press secretary. "We will defend our position. We are committed to going to a panel."

Not only did Ottawa lose the jurisdictional battle at the NAFTA panel, but it has been told in a separate ruling that its ban on interprovincial sales of MMT violates Canada's 1994 Agreement on Internal Trade (AIT).

Several provinces, led by Alberta, challenged the federal legislation under that internal trade agreement. And last month, an AIT panel ruled the MMT ban violated the accord, and recommended Ottawa alter the act to allow interprovincial trade of the substance.

Ethyl is the only North American maker of octane-enhancing MMT, or methylcyclopentadienyl manganese tricarbonyl. It argues that Ottawa's ban essentially amounted to an expropriation of its Sarnia, Ont., plant, which did the final mixing of MMT.

Canada banned the cross-border sale of the additive last year after auto manufacturers said it interfered with

emission controls on cars, thereby causing an environmental hazard. The government concluded there was not enough evidence that the additive itself is toxic to justify its direct ban under the Canadian Environmental Protection Act, but it acted anyway.

A spokesman for Environment Minister Christine Stewart said officials are still reviewing both rulings. "Until that review is complete, I can't comment," said Mark Colpitts, Ms. Stewart's press secretary.

Industry sources said yesterday that the federal government has had talks with Ethyl about dropping its NAFTA challenge in return for changes to the legislation. But the company is worried the government could still resort to a complete prohibition of MMT under environmental protection legislation.

A loss at the three-member NAFTA panel would undermine the Liberal government's free-trade agenda, boosting the credibility of activists who have argued that free trade restricts the government's ability to pass environmental and other regulations.

Maude Barlow, chairwoman of the

Council of Canadians, said she's concerned that the NAFTA panel has ruled that the hearing can proceed even though Ethyl did not seek U.S. government intervention.

"This is the first time ever under NAFTA that a corporation has been given the right to bypass its own government and sue the other government," Ms. Barlow said. "That's the issue that is so unsettling for us."

Ms. Barlow added that she wouldn't be surprised if Ethyl wins its challenge, noting that she's been warning for years that NAFTA had expanded the scope of corporations to limit the regulatory ability of governments.

Ottawa trade consultant Gordon Ritchie, who helped negotiate the Canada-U.S. free-trade agreement, noted yesterday that under that pact, only governments had access to panels, but investors got the right under NAFTA.

"If this claim were to stand, it would impose a major constraint on the sovereignty of a country in pursuing environmental and other regulations," he said. "That's why people are so edgy."