Methanex argues California ban is illegal; Vancouver firm seeks $970 million U.S. Environmentalists fear ramifications

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Washington, Methanex Corp., the world's largest supplier of methanol, argued before a trade tribunal yesterday that it deserves $970 million (U.S.) from the United States in compensation for a 1999 California ban of the gasoline additive it makes.

The Vancouver-based company made its argument in an open hearing at the World Bank in Washington, D.C., capping a five-year legal campaign against California's ban of methyl tertiary butyl ether, which is made from methanol and boosts gasoline octane.

"We recognize that this case presents some thorny political issues," Methanex lawyer Christopher Dugan said in his opening statement to the NAFTA panel. "We would like the case to be decided on its merits alone."

The hearing is the first public proceeding involving the United States as a defendant under North American Free Trade Agreement rules that were meant to secure the rights of foreign investors.

The award of $970 million, which the U.S. Treasury would be forced to pay, would be the largest in the decade of NAFTA.

Methanex is opposed by the U.S. government and environmental organizations that say this case could set off a flood of new cases that target federal or state regulations.

"The U.S. is finally having its feet held to the fire," said Todd Weiler, a trade law specialist in Windsor who also teaches at American University.

A loss could make U.S. "politicians start freaking out and figuring out how they are going to change these provisions."

U.S. state department lawyers will argue their defence today, and the proceedings are scheduled to continue for eight days.

In its written filings, the U.S. government contends California was protecting its citizens when it moved in 1999 to phase out the petrochemical after traces of the additive were found in the state's drinking water.

Massachusetts Senator John Kerry, the Democratic presidential candidate, led a legislative effort two years ago to weaken the investment provisions that are negotiated into trade agreements, and singled out the Methanex complaint as the "most notorious."

"Expensive litigation - and the mere threat of litigation - is having a chilling effect on the ability of state and local governments to promulgate public health and safety laws," Kerry said in the Senate on May 21, 2002.

The Methanex case "demonstrates exactly why we need to protect legitimate public health and welfare laws."
Methanex argued yesterday that California discriminated against the Canadian company when it outlawed the gasoline additive.

The company said the state's ban was deliberately crafted to benefit producers of ethanol, a corn-based alternative to MTBE.

The company said its business of selling methanol to petroleum refiners in California has been effectively expropriated by the state.

As a result of the ban "methanol producers do not receive the market access as U.S. ethanol producers get," Dugan said.

"Local interests try to use environmental regulations as a way to disguise local favouritism."

California, New York, Connecticut and 14 other U.S. states have banned MTBE from fuel supplies to protect water resources, and Congress is considering a similar ban. The chemical persists longer and spreads farther in subterranean acquifers than other gasoline ingredients.

The ban was meant "to protect California's drinking water supplies from a contaminant that makes water taste like turpentine," the state department said in its December written argument to NAFTA. A State Department spokesperson, Damon Terrill, said no one was available to discuss the case.

Methanex contends California could have taken steps other than a ban to avoid MTBE contamination, including stricter regulation of underground gasoline-storage tanks and measures to limit pollution from two-stroke engines such as those used on jet skis.

Opponents of these provisions see it differently.

At stake "is the ability of a state or national government to protect the public's interest without having to pay companies that are threatening that harm," said Martin Wagner, an attorney with Earthjustice, an environmental law group.