

International trade tribunals seen trumping state laws

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MONTPELIER, Vt. --A Canadian company wants to open a new plant in Claremont, N.H., to bottle fresh water from a source in Stockbridge, Vt.

But if Vermont wants to limit how much water the company takes, it may run afoul of the North American Free Trade Agreement.

States around the country are growing increasingly worried about the threats posed to their laws and regulations by the secret tribunals that resolve disputes in international trade. Experts say everything from environmental rules to the licensing of nurses and other professionals could be affected.

"Free trade agreements are to state sovereignty and economic development what global climate change is to the environment and natural resources," said state Sen. Virginia Lyons, D-Chittenden. "I think it's a really significant issue for our state, and for every state in the country."

Vermont is one of seven states to establish committees to study the possible impacts of international trade on their laws.

Assistant Vermont Attorney General Elliot Burg said NAFTA and other trade agreements have opened up a path for international companies that want to circumvent state laws they don't like.

"The issue is not really fair treatment or equal treatment" of domestic versus foreign companies, Burg said. "It's really, 'We don't like the laws you're passing.'"

States are beginning to take notice.

Vermont, New Hampshire, Maine, Massachusetts and New Jersey trade officials recently huddled in Portsmouth, N.H., to discuss the issue.

The National Conference of State Legislatures, which represents all 50 state assemblies, issued a policy paper in August saying it was concerned about lack of state input on international trade agreements.

In one famous case, California sought to ban the gasoline additive MTBE in 1999 after the chemical was found to have contaminated groundwater. A Canadian firm called Methanex filed a \$970 million claim with a NAFTA tribunal, saying the figure represented the money it stood to lose from lost sales in the state.

Methanex lost on that one; in fact, Peter Riggs, director of the nonpartisan Forum on Democracy and Trade, based in New York and Washington, said no trade tribunal has ruled against a U.S. state law to date. But Riggs said some states have pulled back from passing aggressive environmental and consumer protection laws for fear of such challenges.

One trade dispute in which a private company won targeted the Mexican state of San Luis Potosi and the town of Guadalucazar, which wanted to shut down a toxic waste dump that had been bought by a U.S. company, Metalclad. Metalclad argued it had won permission from the Mexican federal government to reopen the dump and resume using it.

The trade agreements have the potential to affect a wide range of state laws, experts said:

-- Product protection: Vermont, America's top maple producer, has strict laws governing the purity and grading of maple syrup. They could be construed as interfering with a Canadian firm's desire to sell its own syrup in the state.

-- Professional licensing: Licensing requirements for registered nurses, for example, are not the same everywhere. If a state sought to block a traveling nurse company from bringing in foreign-trained nurses on the grounds their training didn't meet state requirements, that, too, could be ruled out of bounds by a trade tribunal.

-- Government purchasing: Some states have laws that call on their agencies to shop in-state for food for state cafeterias, paper or other products. Such laws could be ruled discriminatory by an international trade tribunal. Even state Medicaid "preferred drug lists," aimed at securing lower prices for the pharmaceuticals bought by public health programs, could be a target.

Riggs said that when different jurisdictions disagree about trade's impact on local decision-making, it makes it harder to adopt laws as tough as the local jurisdictions might want.

In the case of the Canadian firm's plans to take Vermont water, neither officials with Ontario-based Ice River Springs nor the owner of Stockbridge-based Pristine Mountain Springs -- the company that would sell the water to it -- returned calls seeking comment.

Concern has been growing in Vermont in recent years about taking of groundwater by bottled water companies. The Legislature passed an interim law in 2006, and is expected to consider further tightening regulations during the session that begins in January.

If such an effort ends up impinging on Ice River Springs' plan, Riggs said. "That would be the basis for a possible claim" before a NAFTA tribunal. "That is not to say that the claim would necessarily succeed, but that would be the basis for a claim."