

Court upholds NAFTA tribunal in ruling over Ottawa's PCB move  
\$8-million judgment  
Ian Jack  
Financial Post

Thursday, January 15, 2004

OTTAWA - The Federal Court has thrown out a government appeal of a multi-million-dollar judgment under NAFTA's controversial Chapter 11. The court said a NAFTA tribunal acted properly and within its jurisdiction when it found that Sheila Copps should not have cut off the business of a U.S. waste disposal company when she was environment minister in the mid-1990s.

S.D. Myers Inc., of Tallmudge, Ohio, was awarded \$8-million by the tribunal, an amount that has grown by \$1-million during the appeal due to interest assessed on the award.

A government spokesman said Ottawa may appeal the court decision, but regardless still thinks it was in the right.

"The government still believes the tribunal erred in its interpretation of the NAFTA," said Andre Lemay, spokesman for Jim Peterson, the Minister for International Trade. "If the government decides not to appeal it will comply with the decision and honour its NAFTA obligations."

Barry Appleton, lawyer for Myers, said the decision sends a signal to the government that courts will respect NAFTA rulings.

The 2002 NAFTA tribunal decision found the PCB disposal company was unfairly discriminated against. The Canadian government, led by Ms. Copps, acted improperly when it blocked Myers from shipping Canadian polychlorinated biphenyls across the border for disposal at a U.S. facility.

The case uncovered advice from bureaucrats in the Environment Department strongly advising Ms. Copps not to proceed with the ban on PCB exports, warning it would be "likely inconsistent" with NAFTA.

She acted to protect the business of the sole Canadian PCB disposal facility, in Swan Hills, Alta., even though that meant trucking the toxins cross-country instead of shipping them across the border from Quebec and Ontario, where Myers had signed disposal contracts.

The case was an early flashpoint for opponents of the NAFTA chapter, which allows private companies to sue governments if they feel their assets have been expropriated. In this case, Myers argued its contracts were assets. Critics of Chapter 11 says it gives foreign companies more privileges than citizens in some cases.

[ijack@nationalpost.com](mailto:ijack@nationalpost.com)

© National Post 2004