

THE NOVA WATER EXPORT PERMIT AND TRADE LAW

This permit is not governed by the Canada-US Free Trade Agreement or NAFTA, since the exporter intends to ship the water to Asia, not to the US or Mexico. However, GATT applies, and the FTA/NAFTA do affect what response Canada can make to this challenge.

Since the permit was granted under Ontario provincial law, the province can effectively revoke it, or put sufficient conditions on it, that no exports can occur.

However, for the federal government to talk about banning water exports is unrealistic, given the FTA and NAFTA.

First, water trade is covered by both agreements, since water is a commodity listed in the tariff schedules that are part of them. All water in Canada is included, however it is to be traded: in bottles, diversion channels, pipelines, or tankers. The agreements require that Canada treat US (and in the case of NAFTA, Mexican) investors the same as Canadian ones, and they prevent Canada from stopping a water sale, merely because the purchasers are outside the country.

FTA/NAFTA prevents us from limiting water exports, whether by using bans; different prices for foreigners; duties; taxes; or other charges based on quotas, import or export licences or other measures. Reduction in exports to the US and Mexico can only occur if we reduce our overall "production" and consumption of water in Canada.

These terms in the FTA and NAFTA were major goals for the US in the negotiations, so it is unlikely that the US would simply agree that Canada should now use an export ban to stop this export, even though the US government has given itself that power. (Ironically, the US use of that power could give Canada and Mexico grounds for complaint. It is inconsistent with US free trade obligations)

However, Canada could enact a long-overdue comprehensive water management and conservation policy which could justify an export ban on environmental and sustainability grounds. The federal government would need to stop lying about water and trade, and have the backbone to defend any trade challenge that might result.

Since several provinces (BC and Newfoundland) have some type of export approvals, now or in the past, there will also be federal-provincial complications in Canada.

The best solution would be a joint US-Canada agreement regarding the Great Lakes, to prevent water exports from the Lakes. A policy for all Canada would be more complicated.

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