

TRADE

# Oliver threatens trade fight if EU taxes oil-sands crude

STEVEN CHASE

Ottawa — The Globe and Mail

Published Wednesday, May. 08 2013, 11:21 PM EDT

Canada's Natural Resources Minister is raising the prospect of a trade fight with the European Union over its proposal to label oil-sands crude as dirty even as both sides try to seal a major deal to liberalize two-way.

In Brussels on Wednesday, Natural Resources Minister Joe Oliver said Ottawa would consider launching a complaint with the World Trade Organization, the global referee for commercial disputes, if the EU proceeds with a fuel-quality directive that singles out crude from Canada's oil sands as the most harmful to the planet's climate.

The directive would effectively slap an import tax on oil-sands crude because refiners who use it would face extra costs. EU refiners are required to cut carbon content in fuels by 6 per cent or pay a penalty.

Ottawa fears the directive would hurt Canada's ability to open new markets for its oil and depress prices for North American crude.

"This fuel-quality directive is discriminatory towards Canadian oil and not supported by scientific facts," Mr. Oliver said.

A spokesman for International Trade Minister Ed Fast said that Ottawa believes Canada's campaign for better treatment for the oil sands will not affect trade talks with Brussels.

"Both are being treated as completely separate matters and are being pursued as such," said Adam Taylor, director of communications for Mr. Fast.

Trade experts say the basis for Canada to challenge the fuel directive at the World Trade Organization would be that WTO members are prohibited from discriminating against "like goods" from other countries. Ottawa would probably argue that the EU is breaking trade

rules by taking steps to discourage imports of oil-sands crude while not taking the same action against petroleum from conventional wells.

"Fuel is fuel. It's same product with the same properties and same end uses. Under the WTO agreement, like products cannot be treated differently," said international trade lawyer Lawrence Herman of Cassels Brock & Blackwell LLP.

The legal battle at the WTO would be whether oil-sands crude and conventional crude are "like goods" under the trade rules.

"The basic rule in trade law is that if something at the end of the day is the same product, but is made with a different process, you aren't allowed to treat it differently," Mr. Herman said.

"We may not like certain products that are made with low-wage labour in developing countries. But we can't tax those products differently because we don't like the labour laws in Bangladesh if a shirt from Bangladesh is the same as a shirt from India," Mr. Herman said.

The Prime Minister's Office rejected the notion that Mr. Oliver is rowing in the opposite direction by raising the possibility of taking the EU to the WTO over the EU fuel measure, while Canadian negotiators are trying seal a trade deal with Brussels.

PMO communications director Andrew MacDougall said Canada has to stand up for itself when challenged, even as it works to expand trade in all sectors. "They're not incompatible" aims, he said.

The directive would rank oil-sands petroleum as a more polluting source of fuel than oil from conventional wells even though studies have shown bitumen production is only slightly more greenhouse-gas intensive than some types of crude already used in Europe.

All of the world's oil-sands reserves are in northern Alberta and Saskatchewan. The energy-intensive process required to extract this crude has made it a prime target for environmentalists.

The fuel directive may be headed for a vote by EU environment ministers this fall.

Mr. Oliver said he is still hoping to persuade Brussels to rewrite it.

However, if the European Union enacts the directive without changes, the minister said, "we could have recourse to the WTO and we will consider that."

The WTO adjudicates disputes between its members, which include the EU states and Canada.

If Canada were to win a fight at the WTO – and the European Union refused to relent – the trade referee could grant Ottawa the authority to retaliate by slapping punitive tariffs on European imports.

A spokeswoman for the EU's delegation to Canada said she could not comment Wednesday about Mr. Oliver's remarks.

The clash strikes a discordant note during intense efforts to clinch a mutual trade agreement before Europe's attention shifts to talks for a similar pact with the United States.