

Canada rules out full inclusion of Investment Court System in CETA

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Canada rules out full inclusion of Investment Court System in CETA December 9, 2015:10 pm Steve Verheul, Canada's Chief Negotiator for CETA, has ruled out the full inclusion of the Investment Court System (ICS) in the EU-Canada free trade agreement, known as the Comprehensive Economic and Trade Agreement (CETA), concluded last year. Addressing a group of journalists, on 9 December in Brussels, he said Canada was ready to accommodate certain elements of the EU proposal but made clear that the full inclusion of the ICS was out of the question as it would go beyond what is traditionally considered as legal scrubbing.

"We do have concerns about reopening any further negotiations. We are concerned that whenever that happens you could unravel a very delicate balance that was struck," Verheul said, hinting that re-opening of the investment chapter could prompt changes also in other areas.

"We have reached the balanced agreement that was supported by our leaders and I think that we have to be very cautious about revisiting things that have been agreed and endorsed," he added.

Ottawa is reluctant to commit to a proposal that is likely to be modified during negotiations with the US, Verheul explained.

"The Investment Court System is a proposal that the EU is making in its negotiations with another trading partner - the US. To ask as to sing up to a proposal that we know might end up in a quite different place, if a final agreement is reached, would be a bit unfair," Verheul argued. "We do not want our investors to be in a different situation than other investors inside the EU market. We have no interest in being put at a disadvantage," he added.

The statement came after the Socialists in the European Parliament demanded full inclusion of the ICS in the CETA deal.

"I would call upon the Commissioner also to seek to incorporate this better solution retrospectively in the CETA Agreement with Canada which has already been negotiated," European Parliament

President Martin Schulz told a conference on the opportunities and challenges of TTIP for the social partners on 17 November in Brussels.

According to sources, the position of the Socialists is likely to win the support of the Greens and the far right and far left groups in the European Parliament.

Some member states, including the Netherlands, have also insisted on including the ICS in CETA. The Dutch Parliament adopted in mid-November a non-binding resolution calling for an adjustment of the current CETA agreement along the lines of the new ICS proposal. "The motion is not legally binding as such, but you could interpret it as 'politically binding' as it is supported by a clear majority," a Dutch diplomat told this website.

Verheul anticipated rather "tough" talks with his EU counterpart Mauro Petriccione later this week, on 10-11 December in Brussels.

"I am going to be exploring potential paths forward on this issue, but I should flag that we do have concerns about reopening any part of the negotiations," Verheul said.

Asked what elements of the EU proposal are acceptable for Canada, he pointed to the right to regulate in the public interest and an idea to create an international investment court.

"The right to regulate is already well protected in CETA. But if the EU would like some further reinforcement of the governments' right to regulate, we would probably agree to that," Verheul said.

"We also see some appeal to the notion of an international court for investment disputes, we would be prepared to work with the EU in that direction," he added.

On the appeal mechanism, Verheul recalled that there is a provision in CETA that "says that we will examine the possibility of the appeal mechanism once CETA is implemented." "We are prepared to begin discussions on the appeal mechanism at any point, we can accelerate that timeline by beginning before the agreement takes effect but if the EU is going to press us to adopt the whole mechanism right away it will certainly need to involve more discussions," he added.

The CETA deal was sealed in early August 2014. But due to

internal EU discussions on the reform of the investor to state dispute settlement (ISDS) system, the conclusion of the legal scrubbing of the text has been delayed.

Verheul made clear that Canada wants to move towards ratification as soon as possible.

“One of our bigger concern is that whatever might happen on the investment front we do not want it to further delay the move towards implementation of CETA,” Verheul said.

He estimated that the legal scrubbing could be concluded within 2-3 weeks, provided the EU does not insist on the full inclusion of the ICS in the agreement.

“All options are on the table,” Verheul said, noting that the EU is not likely, however, to conclude the legal scrubbing until all boxes, including the investment chapter, are ticked.

“If the investment chapter is still uncertain I do not think the legal scrubbing will be considered completed until the investment chapter is closed as well,” Verheul said.

On the timeline, Verheul added that provided the legal scrubbing is concluded within next 2-3 weeks, the agreement could be sent for ratification by the Council and the European Parliament in late spring or early summer. He noted that the approval process in Canada is less complex and is expected to be fairly easy, given the political support for the agreement both in the parliament and the new government.