

Drug patents issue too explosive for Canada-EU trade talks

EU bid for expanded patents runs into cheaper price of generic drugs

BY PETER O'NEIL, CALGARY HERALD AUGUST 15, 2012

OTTAWA --- Europe's demand that Canada expand the patent rights of brand-name drug manufacturers has been deemed too politically hot for officials to handle in the Canada-European Union free trade negotiations, say observers who have been briefed on the talks.

The issue, one of the most sensitive on the table and a major source of concern for B.C. and other provincial governments grappling with soaring health costs, will be decided by Prime Minister Stephen Harper's cabinet during 11th-hour talks expected at the end of this year, they say.

"As far as we know they (Canadian and European trade officials) haven't touched it" since negotiations began in the spring of 2009, said Jason Langrish, executive director of the Canada-Europe Roundtable for Business, who is briefed regularly by Canadian trade officials.

"I think the reason is that, simply put, it's a political decision."

The government will make its decision to extend patent protection - the last time it was done in the 1980s the initiative caused a major political stir - when it knows what concessions Europe is prepared to make on key issues such as better access to European markets for Canadian beef and pork producers.

The Harper government has put trade at the centre of its economic agenda, and a deal to get better access to the 27-state EU and its population of just under one half billion would be touted as a major step forward.

But critics, including opposition MPs and a number of Canadian municipalities, have portrayed the proposed deal as too costly.

"The prime minister and his cabinet will decide how much political capital they're willing to use up, based on what they're going to get in return," Langrish said.

University of Ottawa professor Michael Geist, who holds the Canada Research Chair on Internet and E-Commerce Law, got the same message in a recent briefing with chief Canadian negotiator Steve Verheul.

Geist said it was clear that the matter wasn't expected to be raised in the last two scheduled rounds of talks slated for Ottawa Sept. 17-21 and in Brussels Oct. 15-26.

That means drugs will be left to political leaders, since both parties have said their goal is to have a deal by the end of 2012. "My sense is that Canada won't cave on the issue unless they get something in return," Geist said in an email interview.

Verheul, who briefed the international trade committee in June, told MPs the two sides have made "no progress" since negotiations began in 2009 on Europe's drug patent demands.

"We have not responded to those demands, and clearly we've been indicating to the European Union that these are highly divisive issues within Canada," Verheul said.

Expanded patent protection is viewed as hugely important by Canadian brand-name pharmaceutical manufacturers, who say it will spur innovation in Canada.

It's also a top European priority. Germany in particular has major drug firms with an interest in expanding the length of drug patent protection, and Chancellor Angela Merkel is expected to urge Harper to accept the EU's demand in her meetings with him in Ottawa Wednesday and Thursday.

But provinces cite an academic study funded by generic drug firms which says Canadians -- consumers, companies, unions and government insurers -- will pay an extra \$2.8 billion a year if Europe's demands are accepted.

Of that total Ontarians would pay \$1.2 billion, Quebec \$773 million, B.C. \$249 million and Alberta \$212 million.

"All premiers have sent letters, I'm told, to the federal government, expressing our concern about this specific issue, because we want to make sure, as I said, that British Columbia's interests are represented," B.C. Premier Christy Clark told the B.C. Legislature under questioning in June from New Democratic Party leader Adrian Dix, who has been vocal on the prescription drug issue.

Clark said if B.C. drug costs soar the province wants Ottawa to "reimburse us for those added costs."

The EU is asking Ottawa to allow extensions for up to five years on the 20-year patent life to compensate innovating brand-name companies for regulatory or development delays while the patent clock is running.

Brussels also wants an extension from eight to 10 years for the right to "data exclusivity," which prevents generic firms from using data from clinical trials to create their copy-cat drugs.

And the EU wants brand-name companies to obtain the same right of appeal as generic drug makers have when challenging a patent in the courts.

The drug issue is one of at least a half-dozen highly sensitive matters that are expected to be left to politicians to decide. Canadian provinces, for instance, are being asked to allow European firms to bid for procurement contracts issued by provincial and municipal governments as well as institutions like hospitals, schools and utilities.

Europe also wants better access to Canada's heavily-protected cheese market.