

# Patent protection emerges as contentious issue in Canada-EU trade talks

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OTTAWA -- The return of Parliament after a long, hot summer may be getting the attention, but it's another kind of political re-start Monday that is likely to have the bigger ramifications for Canada's future.

Officials from the European Union are travelling to Ottawa for what is scheduled to be the penultimate session in their long-running trade talks road show -- the final is set for Brussels in October -- intended to finally close at year's end.

With the finish line in sight, battle lines are forming around the previously under-the-radar issue of intellectual property protection for pharmaceuticals, with both sides releasing polls on Sunday promising massive public support for their position.

At stake is whether Canada will agree to meet the European standard that gives pharmaceutical companies exclusive rights to detailed information (data exclusivity) on new patented drugs for 10 years, only a few years after Ottawa raised the domestic ceiling from five to eight.

Patent protection, along with government procurement at the provincial level and protection schemes in milk and cheese products, have been the key European demands for opening up their lucrative if economically troubled market to Canadians.

But critics are making the point that the longer the wait before the generic industry is barred from producing their own cheaper versions, the higher the cost to provinces and Canadians.

The Council of Canadians, a left-wing activist group, trumpets a 2011 economic study concluding that lengthening data exclusivity and patent terms to EU standards could delay generic versions by 3.5 years and cost drug plans close to \$3 billion.

Given the pocket-book ramifications, Russell Williams, president of Canada's Research-Based Pharmaceutical Companies, concedes he has the harder selling job.

Last week the lobby group began a low-level advertising campaign, supplementing that Sunday with a Nik Nanos Research poll suggesting three-quarters of Canadians support identical or superior intellectual property protection to Canada's major trading partners.

The group also plans to release reports backing the contention that enhanced patent protection leads to more investment in research and development, and more jobs for Canadians.

"We spend well over \$1 billion a year in research and three-quarters of that is in clinical trials," said Williams. "It is true it's been slipping (since 2007) but that's because Canada hasn't been competitive on (intellectual property protection) at the global level."

Coincidentally, the Council of Canadians and other civil society groups released their own commissioned polling Sunday from Ipsos Reid. It suggested that while 81 per cent of Canadians support a trade deal with Europe, 69 per cent would oppose one if it meant higher drug costs even if it does encourage more research.

The contradictory findings, both from reputable pollsters, suggests Canadians may be confused about the complex issue and are open to being swayed.

That may not be the case of the Canadian government, however. Stuart Trew, a trade campaigner with the Council, says he believes the Harper government is pre-disposed to back "Big Pharma" on the issue despite the potential public backlash.

That's why his group staged a low-key demonstration in front of Parliament Hill on Sunday, with puppet replicas of the premiers and a

"wheel of fortune" that rendered the same result -- "Higher drug costs" -- with every spin.

"We're aiming at the premiers because we're worried the Harper government has made up its mind (and) the premiers are going to be the ones paying for the higher drug costs, and they're in position to say no," he explained.

The critics of enhanced intellectual property protection say Canadians pay 20 per cent more for patented drugs than citizens of France and Germany, but to Williams that's an argument backing his side.

The EU already has a 10-year regime and drug costs have not skyrocketed, he points out. As well, extending protection by two years won't show up in drug prices until at least 2022, he says, while the benefits of attracting more research dollars to Canada could kick in much sooner.

"The cost argument has been misrepresented, and the value argument unfortunately hasn't come into the discussion," he said. A spokesman for Trade Minister Ed Fast said the issue of patent protection remains unresolved, adding the government "has always sought to strike a balance between promoting innovation and job creation and ensuring that Canadians continue to have access to the affordable drugs they need."

One of the difficulties facing Canadians is that they have little firm information on which to base their opinions. The talks have been conducted behind closed doors.

But with the talks nearing resolution, one way or another, that is about to change. Officials say government ministers will become more active in selling the benefits of deal through announcements and speeches.

In broad strokes, Ottawa estimates the boost of a trade deal to Canada's gross domestic will be in the neighbourhood of \$12 billion. Trew admits though that the momentum for a deal has built and that both Canada and the EU appear eager to sign an agreement.

For opponents, their best hope for failure may lie in the sheer complexity of the talks and ratification process. Unlike past trade deals, the provinces have been active participants in the negotiations, and all EU countries must ratify any agreement.

Adding to the impediments, not all governments that supported the talks two years ago remain in power to back the ratification, most notably in France, where the socialist Francois Hollande has replaced the conservative leaning Nicolas Sarkozy. Even in Canada, the talks have lost a key champion in Jean Charest, the defeated premier of Quebec.

Williams, a former member of the Quebec legislature, says he believes all governments remain on side, but concedes "politics can become a complicating factor."

In the best case scenario, he said Canada and the EU could have the world's most advanced trade deal in place by early 2014.