

# What to watch for in the next Canada-EU trade round

## **Expect progress on services, labour mobility, procurement; but challenges remain on IP, investment.**

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On Oct. 6, after asking to appear in front of a parliamentary committee, Trade Minister Ed Fast boasted about the benefits and the preferential market access Canadians would have from a trade agreement with the European Union.

Mr. Fast's appearance before the House trade committee came just a week and a half ahead of the ninth—and, as some predict, potentially last—round of formal talks on the Comprehensive Economic and Trade Agreement in Ottawa starting Oct. 17.

But while emphasizing the strong political momentum behind completing a deal that would be larger in scope than the North American Free Trade Agreement, Mr. Fast also cautioned that the government would only sign a pact that is in the best interest of Canadians.

"Canadian products, services and commercial expertise are for sale," he said. "Our government's powers and ability to regulate are not."

The minister's remarks highlight to a large extent existing tensions, among groups in both Canada and the EU, over a number of issues the deal has caused to surface—many of which are expected to be on the table in the ninth round.

While progress is clear on some issues, like labour mobility, or is expected in others, like government procurement and services, observers point to investment protection, intellectual property, and rules of origin as some ongoing contentious issues.

### **Investment protection**

Canadian and European negotiators exchanged the first set of offers on goods and procurement during the last round of talks in July in Brussels, Belgium. Their plan was to exchange the second set of offers on services and investment before this month's round.

After several notable delays caused by bureaucratic differences, EU officials in Ottawa told *Embassy* an offer exchange on services, including financial services, should be expected this week. Moreover, the European Commission only recently received a much-awaited mandate from the member states to negotiate investment protection.

Last year, according to EU documents, Canada asked for the inclusion of an investor-to-state mechanism in the deal, similar to Chapter 11 of NAFTA. This is a controversial provision that allows corporations to seek compensation from states if government policies hurt their business interests.

This would be the first time EU member states as a whole would include an investor-to-state dispute settlement as part of a trade agreement.

EU officials initially predicted the European Council (made up of the heads of the member states) would vote give the green light last spring, and also decide on the framework, including limits, of a dispute settlement mechanism. But the European Commission received its mandate only on Sept 12. This mandate was not only within the trade deal framework with Canada, but also included in the EU's talks with India and Singapore.

Since the mandate is new, progress on investment has been limited, Steve Verheul, Canada's chief trade negotiator on the deal, told committee members. Negotiators had their initial discussions on investment protection in Brussels at the end of September, he added, describing them to be "at a very early stage."

An *Embassy* column on Oct. 5 suggested certain EU member states are wary about

including a NAFTA-like dispute settlement mechanism in the deal, since they believe this framework would dilute the level of investment protection individual EU member states managed to negotiate for their companies in talks with developing countries in the past.

But as in Chapter 11 of NAFTA, the principle should be that of non-discrimination, not full protection, said Patrick Leblond, professor at the University of Ottawa's Graduate School of Public and International Affairs.

"When the EU negotiates with developing countries, they can impose stricter conditions," he said. "But I think it will be very difficult for Canada to offer something more or less than what they have with NAFTA."

The difference is also that EU member states in general prefer the dispute resolution model offered by the World Trade Organization, which is more comprehensive but also more onerous, while Canada prefers the NAFTA model, said Jason Langrish, executive director of the Canada-Europe Roundtable for Business.

This means member states are cautious since the investment chapter in the Canada-Europe deal would set a precedent for them, he added.

From a Canadian perspective, an investor-to-state dispute mechanism is a good idea because certain member states have expropriated mining companies in the past and Canada may be worried about that, Mr. Langrish said.

### **Intellectual property**

While including an investor-to-state dispute resolution mechanism has been a Canadian demand, the Europeans have been adamant about seeing significant reforms to Canada's intellectual property rights. These range from changes to copyright laws, to better enforcement at the border, a potential change to Canada's trademark regulations based on geographic indicators, and important changes to

the regulations governing pharmaceutical companies.

After the end of the eighth round of talks in July, *Embassy* reported that discussions on intellectual property were among the biggest and continuing challenges for negotiators, where much is hinging on political signals from Ottawa in the form of the introduction of government bills that may help move talks along.

The Conservative government reintroduced its Copyright Modernization Act, Bill C-11, on Sept. 29. This is the third time the Conservatives have introduced such a bill recently—but with a majority government, they now have the numbers to pass it. They hope to do so by Christmas.

Both the EU and the US have said Canada's copyright laws are outdated and need reform.

"The EU was of course very interested in the bill that was tabled [at the end of September]," Mr. Verheul told the committee. "It contains many elements that they would welcome and have been looking for."

But he also said: "I don't think it contains all of the elements that they're looking for in the area of copyright so we'll probably be having further discussions, but we don't expect this to be a major challenge in the negotiations."

In a briefing in July, the chief negotiator also said the government needs to introduce a separate bill to deal with enforcement, basically giving border and customs officials more power to seize counterfeit goods, including those falling under copyright piracy.

Now that Canada signed the Anti-Counterfeiting Trade Agreement on Sept. 30—a controversial deal that almost a dozen countries and the EU negotiated behind closed doors and outside international organizations such as the World Intellectual Property Organization—another legislative change may be underway.

While one area of intellectual property is progressing, there has been no movement on the rules governing pharmaceutical companies—and not much may change during the ninth round, according to Mr. Verheul.

The Europeans are looking for three changes: a so-called "patent term restoration" that would give brand-name pharmaceutical companies up to five years of extra product exclusivity, to make up for the lengthy regulatory approval process; a strengthened appeal process against generic manufacturers; and an extension of a brand-name pharmaceutical company's ability to protect data from clinical trials.

These demands have prompted fierce opposition from generic manufacturers over fears drug prices might rise.

Mr. Verheul said Canadian negotiators have made no concessions in this IP area yet, recognizing the rift between brand-name and generic pharmaceutical industries in Canada.

"We may not make any moves on this issue," he added.

But Mr. Langrish said Mr. Verheul's comments should be read between the lines.

"Just because the chief negotiator goes to a public session and says we won't move on this, doesn't mean we are not going to move," he said. "He is saying 'If you want us to move on this, we need something big in return.' It's a negotiating tactic."

He added: "I cannot see any ways this negotiation can be complete without a move on IP, specifically pharmaceuticals, because [Europeans]...are keen to see changes occur."

### **Other issues**

Mr. Verheul also talked to the committee about the challenges in negotiating the rules of origin provisions of the deal. The country of origin of a product would

impact the way it will be traded.

For example, Canadian fishermen catch some types of fish, like lobster, in American waters, and process it in Canada, muddling the interpretation of country of origin—and creating some discrepancies in talks with the Europeans regarding what specific products will have full duty-free access.

"We're...trying to work out a process whereby even some of the fish that may have been caught in other waters, but processed in Canada, will also have access to the EU market," the chief negotiator said.

"The rule of origin issue has been a challenging one across many sectors and it comes in part because of the fact that just as the EU 27 member countries have integrated their market, our market is to a large extent integrated with the US in some sectors," Mr. Verheul also said.

On a positive note, Mr. Verheul said negotiators are close to finalizing a chapter on the mutual recognition of qualifications, which would let various professionals, such as architects or engineers, work in each other's market. This has been a very high priority for provinces and territories, he said.

Negotiators are also expected to continue drafting the procurement chapter, based on the offers they exchanged during last round. Opening the doors of provincial public procurement has been a key EU demand, but also a controversial issue for some municipalities and Canadian civil society groups.

Mr. Verheul said the chapters would include—besides thresholds indicating when contracts are open to European bidders—several flexibilities for municipalities, such as social and environmental factors and job training.

With all this on the table, Mr. Langrish said he would not be surprised to see more delays. He said he expects the investment offer to be exchanged only later.

"At the end of the round there will be more clarity, but not as much as we would have hoped," he said.

Still, as more issues are checked off the to-do list, the size of the negotiating team will shrink and more focus will be on inter-sessional rounds, Mr. Langrish added.

Phil Rourke, executive director at Carleton University's Centre for Trade Policy, said that if the target to finalize the deal is 2012, negotiators need to narrow the talks to a few key issues by Christmas this year, get further political direction from the minister, engage in intense negotiations in the winter and spring and have a draft of the agreement during the summer, with the hope of making an announcement in the fall of 2012.

Mr. Verheul confirmed that after the October round the two parties will enter a more intensive phase of the negotiations with an aim of reaching agreement on most of the major issues "by the first couple of months" of 2012.