

# Canada prepares for drug patent concessions to clinch free-trade deal with EU

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OTTAWA - As free trade talks with the European Union reach the endgame, Ottawa is signalling it is prepared to give the Europeans at least part of what they asked for on drug patents — a move that could cost Canadians up to \$900 million a year.

With negotiations at the bureaucratic level nearing closure, International Trade Minister Ed Fast will meet his European counterpart in Brussels next week, taking the discussions to the next level.

He and Agriculture Minister Gerry Ritz hope to hammer out the most contentious details of the agreement in hopes of bringing it to a close in the coming weeks — although both Canada and Europe are indicating that discussions will likely drag on into the new year.

"The things that are really difficult are being saved till the end," said John Weekes, a trade consultant who was the chief negotiator for NAFTA and who is now advising the generic drug industry.

"The presence of the ministers will create a different dynamic."

At the same time, the government has launched a public relations blitz in Canada designed to convince Canadians that the free-trade deal with Europe will mean better sales of "iconic" Canadian goods such as maple syrup and Tilley hats, and bring in benefits to the tune of \$1,000 extra per family per year.

But the PR exercise is not going anywhere near the intellectual property issue that has clouded the talks from Day 1.

Government and industry sources say Fast is willing to give the EU

somewhat stiffer patent protection for brand-name pharmaceuticals, despite intense pressure from the generic drug industry in Canada, health care advocates as well as several provincial governments who don't want to see their drug costs rise.

But government officials are also warning that it's not over until the fat lady sings, since the final rounds of any trade negotiation are full of give and take — and drug patents are right in the centre of that dynamic.

"Negotiations are continuing and the negotiating teams are engaged in focused discussions on the remaining issues, covering a wide range," said Adam Taylor, a spokesman for Fast.

"Speculation on any final outcomes would be precisely that — inaccurate speculation."

Isabelle Robillard, the spokesperson for Canada's Research-based Pharmaceutical Companies, refused to comment while the talks are still ongoing, although sources say the brand-name industry is quietly celebrating victory.

The generic drug industry, meanwhile, is not admitting defeat. "We're still hopeful," said Jim Keon, president of the Canadian Generic Pharmaceutical Association. "We haven't been told of any final decision."

NDP trade critic Don Davies said increased patent protection wouldn't necessarily be a deal-breaker for the official Opposition. The NDP will wait to see the final agreement in its entirety and weigh the overall pros and cons before taking a position on it.

Still, Davies said it seems a "curious" negotiating strategy to telegraph Canada's willingness to cave on drug patents. And it underscores the danger involved in negotiating trade deals behind closed doors with no public input.

"I do think that Canadians need to know that the Conservatives are pursuing, under the guise of trade policy, they're including many other policies that I think Canadians wouldn't support if they weren't buried

in a trade deal," he said.

An internal government calculation of the effect of stiffer brand-name patent protection pegs the cost at between \$367 million and \$903 million a year, since longer patents mean provincial governments, employers and consumers will wind up buying brand-name drugs for a longer period rather than cheaper generics.

But it could be worse. A full concession to EU demands on patent-term restoration would extend brand-name patents by an average of 2.66 years, and cost Canadians between \$795 million and \$2 billion a year, according to government calculations obtained last month by The Canadian Press.

Sources say Ottawa is not willing to go that far, but could settle for a more moderate version of the EU demands.

"It wouldn't surprise me at all, because that's the trajectory we're heading down anyway," said Ottawa-based international trade consultant Laura Dawson.

Brand-name pharmaceutical companies, with head offices mainly based in Europe, have long been at war with the generic industry in Canada, lobbying constantly for changes in the drug patent regime that would tilt regulations in their favour.

In the European trade talks, the EU has put forward three demands on drug patents: patent term restoration to make up for the time brand-name drugs wait for regulatory approval; 10 years of data exclusivity, instead of eight; and beefed-up legal rights for brand names to appeal patent decisions.

Europe and the brand-name industry have argued that Canada's patent regime is below international standards — an argument echoed by the United States and many within Canada's business community.

And even the generic drug industry is willing to entertain a change in the avenues for legal appeals, if it means making a more coherent system for an industry known for its litigious nature.

Canada has not been willing to discuss any of the demands until now — leaving one of the most contentious agenda items until the very end of the talks.

Now, federal officials are under intense pressure to deliver a final deal, said Dawson. And since ceding ground on pharmaceutical patents will probably be demanded of Canada in upcoming trade talks with Pacific nations anyway, a partial concession with Europe — in return for something else — seems like a wise move.

"Canada is really feeling a lot of pressure to conclude this agreement," Dawson said. "The Canadians are sweating."

It's not clear what Canada would get in return, although better access to European markets for Canadian beef and pork is likely on its list of possibilities.

The federal government says the trade agreement with the EU would boost bilateral trade by 20 per cent, and add \$12 billion a year to Canada's economy — gains that translate to an average of \$1000 a year per family, or 80,000 new jobs.