

EU free trade deal potentially costly for Ottawa

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Published Wednesday, Jan. 25, 2012 8:39PM EST

A trade deal with Europe, now close, will change the way Ottawa and the provinces do business abroad. It will create a new level of free trading within Canada. It might also lead to an expensive, litigious mess.

The talks for a Canada-European Union trade agreement are close to an end now, and the deal should be done within weeks or a few months, according to people on both sides. Next week, EU officials arrive to clear away remaining disagreements after the nine rounds of negotiations.

This transatlantic trade deal has always revolved around the provinces. Quebec Premier Jean Charest was the instigator. For the EU, the prize that made it worthwhile was access to provincial and municipal contracts, so their companies could bid on a Toronto subway or Hydro-Québec turbines.

Because so much of the deal depends on the provinces, it will have effects that other trade deals haven't. It will free up trade across provincial lines. It could also mean Ottawa pays for more settlements when provinces breach the deal, like the \$130-million tab Stephen Harper picked up for Danny Williams in 2010.

Once provinces and cities have to open up bidding to EU companies, their tenders are likely to be consistently open to bidders from other parts of Canada, as well. Part of the Harper government's interest in the EU deal has been that it would break down some trade barriers between provinces.

But that also means a deal will put restrictions on towns and provinces. When provinces are legally bound, so are municipalities. If

Montreal wants to hand a subway contract to Bombardier, they won't be able to. If Ontario wants to promote a green technology industry by requiring Ontario Power Generation to buy local, they won't be able to.

At least in theory. The catch is that if Ontario or Quebec or any other province breaks the rules, it's Ottawa that pays the bill. Ottawa signs trade treaties, so they pay the piper.

Back in 2010, when AbitibiBowater closed a Newfoundland mill, Danny Williams's government expropriated Abitibi's timber and water rights. The company sued under NAFTA, and Ottawa paid \$130-million to settle.

Mr. Harper grumbled. He said he'd create a mechanism so next time, the province would have to pay back Ottawa. But that's not easy. Ottawa has exclusive jurisdiction to sign treaties, but provinces have jurisdictions, too.

There are other big trade suits, huge ones, under the NAFTA and WTO, against Ontario's Green Energy Act. It requires companies selling green energy to Ontario's power grid to use a certain amount of Ontario technology.

The Ontario government argues it has every right to favour a local green-tech industry. That might be politically popular, too. Certainly there are people and groups, like the Canadian Auto Workers and some Toronto city councillors, who think local politicians should be able to favour the local economy.

In a new EU trade deal, where provincial contracts are the big prize, there's all the more potential for provincial decisions to run afoul of the rules.

European countries long worried whether provinces will be bound by the deal, but they will have to settle for Ottawa being bound for them.

Canadian officials said the EU deal won't include any formal sign-on binding the provinces. They expect provinces to signal political support.

But of course, future provincial governments can disagree. The trouble is this trade deal hasn't been through the kind of political crucible that met free trade with the U.S. in the 1988 election. It's hard to argue the people of each province have signed on to this deal, warts and all, and have committed.

That will be important. A deal with the EU could set a pattern in which Ottawa and the provinces work together to accept sometimes painful concessions to carve out new markets, if it doesn't lead to costly squabbles.