

# EU trade talks stalling on intellectual property

■ Negotiators say government bills are needed to make progress on copyright and enforcement.

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Although trade talks between Canada and the European Union reached a new level this month with the exchange of market access offers, negotiators say discussions on intellectual property are among the biggest and continuing challenges, with very little progress to account for so far.

Officials are now waiting for a strong political signal from Ottawa—in the form of government legislation—to break some of the impasse on this controversial sector that the EU wants to see reformed.

In a briefing with the civil society sector on July 22, Canadian chief negotiator Steve Verheul gave a summary of the main developments after the eighth round of talks of the Comprehensive and Economic Trade Agreement, which took place in Brussels the week before.

While he highlighted the exchange of goods and procurement offers, as well as progress in areas like labour mobility, Mr. Verheul also said many of the issues falling under the intellectual property umbrella have been stalling.

The Europeans are asking, among other things, for significant amendments to Canada's copyright laws; better enforcement at the border; a potential change to Canada's trademark regulations based on geographic indicators; and an extension of patent life for brand-name pharmaceutical companies.

Mr. Verheul told the Canadian civil society groups that his team cannot advance talks on copyright until the Canadian government introduces a bill in the House of Commons that tackles the issue.

The Harper government pledged in the last federal election campaign, as well as in the Throne Speech, to pass legislation that would modernize Canada's copyright laws—and that will likely happen this upcoming fall, according to reports.

This would be the government's third attempt to pass new copyright legislation after the controversial Bill C-32 died when the election was called and the previous Bill C-61 had the same fate in 2008 when Parliament was prorogued.

Industry and foreign governments have long argued that Canada's copyright legislation is outdated. Among other things Bill C-32 would have legalized activities people often engage in, such as copying a CD, but would have prohibited breaking digital locks placed on gadgets and media. The new bill this fall is expected to be almost a duplicate of the previous one.

Mr. Verheul also said the government needs to introduce a separate bill to deal with enforcement, basically giving border and custom officials more power to seize counterfeit goods, including those falling under copyright piracy.

This legislative change is expected anyways, the chief negotiator said, because Canada is part of the Anti-Counterfeiting Trade Agreement, whose final text was released last November. ACTA is 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.

A bill to implement the ACTA provisions would also help move talks along with the EU on the enforcement topic.

Negotiators have also not been able to make much progress on the discussion of patents for pharmaceutical companies. One of the main things the Europeans have been pushing for in this area is an extension of the patent life for brand-name pharmaceutical companies, which prompted fierce opposition from generic manufacturers over fears drug prices might go up. Mr. Verheul said there has been no move to bridge that gap.

A final report in March assessing the impact of the CETA on both Canadian and European markets, commissioned by the EU, noted that Canada's IP laws are much more limited than that of many OECD countries and a modernization would benefit the publishing and the pharmaceutical industries.

However, it also stated that as a net-importer of IP assets, Canada has an interest in maintaining some limitations and exceptions to its laws, since otherwise, the CETA could have an adverse effect on consumers of pharmaceutical and educational products.

Negotiators have also been making limited progress in the discussion of geographic indicators, another form of IP and another major focus for the Europeans. This provision identifies certain products based on their geographical origin, which means, for example, that champagne would only refer to the alcoholic drink imported from the French province and the rest would be called sparkling wine.

It is not surprising progress has been slow since the IP issues, especially the ones dealing with pharmaceuticals, are very controversial, said Jason Langrish, executive director of

the Canada-Europe Roundtable for Business.

"It has to be a political decision," Mr. Langrish said. "It requires changes to regulations. It's one thing to say we are going to remove tariffs on products but it's another thing to say we are going to change regulations governing the pharma companies."

Those decisions are hard to make, especially since Canada does not seem like it will gain much out of the proposed IP amendments, added Michael Geist, law professor and copyright expert at the University of Ottawa.

"Almost all the intellectual property benefits are weighted in favour of the EU and there's hardly anything in favour of Canada, even according to the EU's own analysis," he said. "There is no big surprise progress has been slow."

However, Mr. Geist also said that "for those concerned where we might go with IP, there is a lot of reason for pessimism... because it's hard to envision a scenario where the government derails the entire text by virtue of concern for the IP."

But Canadian and European negotiators might also meet somewhere in the middle, said Cyndee Todgham Cherniak, trade lawyer with the Toronto-based group Lang Michener LLP.

"It's not uncommon for a hard topic to be dealt with in the later stages because if there is enough on the table in terms of the other issues, like government procurement, for example," she said, "and if the EU is satisfied with how far Canada has come, they maybe be able to agree to something less than the starting position. Like in any other negotiation."

The next round of talks will be held in October in Ottawa.

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