

Legacy of Danny 'Chavez' Williams impacts EU trade talks: Canadian official

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MONTREAL - A controversial NAFTA provision that allows corporations to seek compensation from governments is likely to be included in any eventual free-trade deal with Europe, say sources close to the negotiations.

Representatives from Canada and Europe are scheduled to meet in Ottawa this week to prepare for the next round of negotiations aimed at finalizing a wide-reaching economic and trade agreement by the end of 2011.

Ottawa predicts the Comprehensive Economic and Trade Agreement with Europe will boost the country's GDP by \$12 billion annually. The shape of a final deal is still far from certain, but it appears the Europeans are increasingly warming up to a Canadian demand that closely resembles the Chapter 11 clause in the North American Free Trade Agreement.

Under the NAFTA clause, investors have received huge cash payments to compensate for government policies that hurt their business interests.

European negotiators were initially leery about a similar clause being included in a free-trade deal with Canada, according to one Canadian official who plays a senior role at the bargaining table.

Among the considerations that has helped change their mind, the official said, was the recent \$130-million cheque Ottawa handed to newsprint giant AbitibiBowater (TSX:ABH) to settle a Chapter 11 claim.

"I think we'll see the inclusion of a Chapter 11-type clause," the official said at a recent briefing, which was conducted on condition of anonymity.

AbitibiBowater appealed for compensation under NAFTA after Newfoundland and Labrador expropriated its hydroelectricity and timber rights in the province in 2008.

Then-premier Danny Williams was furious with the company's decision to close a century-old plant in Grand Falls-Windsor, which resulted in the loss of 800 jobs.

The trade official referred to Williams jokingly as "Danny Chavez," comparing him to Venezuelan President Hugo Chavez, who has drawn the ire of private sector interests for repeatedly nationalizing elements of the Venezuelan economy.

In its trade agreements to date, Europe has tended to deal with compensation claims at the state-to-state level.

But observers point out that most of these deals have been with developing countries.

"Canada is a different kettle of fish," said Jason Langrish, who heads the Canada-Europe Roundtable for Business, a lobby group representing CEOs on both sides of the Atlantic.

"When you're dealing with a country like Canada, the investor-state model becomes more palatable."

The Europeans are "coming around" to the Chapter 11 approach and Langrish agrees that the AbitibiBowater settlement has likely helped.

The European Trade Commissioner's office declined to comment about details of the negotiations.

Chapter 11 has long been a rallying point for critics of free trade, who fear it gives too much power to corporations at the expense of public interests. They're now concerned about a free-trade deal with Europe that will expand that precedent.

"There is definitely strong support in the European corporate business community for these types of provisions," said Scott Sinclair, a research fellow at the Canadian Centre for Policy Alternatives.

"Even some of the member governments are pushing the commission on this issue and they see the Canada-EU treaty as a potential opportunity to get these types of provisions in place.

Sinclair suggested the inclusion of a Chapter 11-type clause would increase the pool of investors able to make claims against the Canadian government.

If a deal with Europe included something similar to Chapter 11, he said that U.S. and Mexican companies could use another NAFTA clause, the most-favoured nation status, to ensure they benefited from whatever rulings favoured Europe.

"Everything is connected; the MFN clause creates a sort of crosswalk between these two treaties," Sinclair said. "We're opening ourselves up to additional claims from U.S. investors."

Concern over the potential inclusion of an investor-state claims process reaches well beyond Canada.

It was the subject of a recent statement signed by several dozen trade experts at universities around the world, which characterized payments like the one made to AbitibiBowater as "a serious threat to democratic choice and the capacity of governments to act in the public interest."

From the business community's perspective Chapter 11 has, for the most part, worked in Canada's favour. Large settlement payments, Langrish said, were rare.

"The number of times they've successfully sued is minimal. It's a wrinkle that needs to be ironed out."

But Sinclair predicted a swift reaction in Europe if civil society groups get wind of the intention of switching to an investor-state model.

"If they felt that the European Commission was trying to pull a fast one, and sneak this into the treaty with Canada, then I think that the situation could change very quickly," he said.

The next round of negotiations will get underway late next month in Brussels.