

# Some in EU want to slow trade talks with Canada

## **Fears Canada will take NAFTA route balancing government and business rights.**

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While Canadian officials are still hopeful that a Canada-EU trade deal can be finalized by next year, some EU member-states would like nothing better than to shunt talks onto a slow-track.

A particular sore point emerging in the Canada-EU Comprehensive Economic and Trade Agreement, which sees its ninth round of talks take place this month in Ottawa, is the politically-incendiary topic of foreign investment protection.

In principle, a Canada-EU pact should include protections like the ones that were written into the North American Free Trade Agreement that aim to protect foreign-owned assets from various forms of government mistreatment.

But those protections proved controversial when foreign investors attempted to use them to fend off new regulations or public policy measures. After a barrage of arbitration claims, the NAFTA governments circled the wagons and moved to clarify that such protections should not immunize foreign investors from every risk and cost of doing business in a foreign country.

While a lot of thought in Ottawa goes into striking this balance between legal security to foreign investments and giving governments the elbow-room to make public policy decisions, this cautiousness on the part of the NAFTA governments has not sat well with pro-business elements in Europe—including certain European government officials that handle trade and economic portfolios.

In a series of recent closed-door meetings in Brussels, several "Friends of Investment"

have spoken bluntly about their fears of "NAFTA-contamination". Accustomed to pushing for high levels of security for European companies investing in the developing world—and not yet having suffered the legal blowback which has buffeted the NAFTA countries—they are on guard against any attempts to dilute the international legal protections given to foreign investors.

In recent months, it has become apparent that the "Friends of Investment" fended off several attempts by the Commission to put the EU on a more NAFTA-compatible negotiating track. Officials from some European countries also argued that negotiations with Canada should be delayed until the EU can negotiate with trading partners that are prepared to take a more pro-investor approach.

Other officials, fearing the optics of such a move, pushed for Canada to be kept on the same timeline as other countries, such as Singapore and India, with whom Europe wants to negotiate.

One European trade official recently explained to *Embassy* that their intention was for the European Commission to stay as close as possible to the type of pro-investor template long used in parts of Europe in dealing with former colonies and other developing economies.

### **Restrained reaction**

For the better part of a year, the EU's executive branch, the European Commission has been working with officials from the various EU member-states in an effort to agree an EU negotiating platform that can be tabled in talks with Canada and others. On September 12<sup>th</sup>, a negotiating road-map was agreed between the Commission and the member-states.

But Canada's more cautious approach—with multiple caveats and limits written into agreements—is scorned by some European hardliners. Yet, it's not as if Canadians are throwing the baby out with the bathwater.

Australia, by contrast, has recently thrown its own treaty ambitions into reverse after being hit by threats from Chinese coal companies and foreign tobacco companies. When Australian health and environmental policy initiatives were targeted by litigious foreign investors, Australia decided that it would no longer pursue treaties that give investors broad legal protections and the ability to sue governments when those protections are endangered.

Instead, in a policy reversal announced earlier this year, the Australian government is urging companies that do business abroad to buy insurance to guard against the risk of nationalization or other misfortune.

By comparison, Canada's reaction to being sued by a string of NAFTA-waving U.S. investors has been positively restrained. Nevertheless, in certain parts of Europe, any roll-back of legal protections for cross-border capital flows is viewed dimly.

Yes, it's true that Europe is now green-lighted to negotiate with Canada on investment. But don't be fooled by the color of the traffic light: This journey may not feel like a heady spin on the autobahn, so much as a long drive down a winding country road.