

Trudeau's three paths to finishing Canada's EU trade deal

Canada could “tweak” investor-arbitration clauses, but that compromise may not go far enough, says Canada Europe Round Table chief.

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The Trudeau government has three choices if it wants to push Canada's trade deal with Europe forward, say Canada-Europe trade watchers, though none are guaranteed routes to success.

Canada's [Comprehensive Economic and Trade Agreement](#) with the European Union is in month 14 of what is turning out to be a very thorough “legal scrub.” The previous Conservative government and EU leaders announced they had reached an [agreement "in principle" back in 2013](#), and then announced last year that they had [finished talks](#).

But after [waiting months for Canada's federal election](#), CETA is still yet to be signed and ratified. It remains stuck in the middle of a [political battle](#) in the EU over the merits of investor-state arbitration, a system that allows businesses to sue governments for unfair treatment through international arbitration. Canada's chief negotiator for CETA was set to meet with EU politicians and public servants Dec. 9.

Most of the controversy is centred around the inclusion of investor-state arbitration in a proposed Europe-United States trade deal, called the Transatlantic Trade and Investment Partnership. But CETA has also been caught in the mix, say business lobbyists and a civil society activist who monitor the negotiations.

Many citizens and politicians in Europe oppose investor-state arbitration, or at least a system in which private arbitrators decide the cases. Despite that opposition, the Conservatives had held firm that the deal was finished and should be ratified as is.

The new Liberal government can take one of three approaches to resolving the deadlock, say a pair of business lobbyists following the furor: follow the approach of its predecessor, agree to reopen the deal's investment chapter or push to drop the controversial investor-arbitration measures altogether.

Compromise no guarantee of support

Trade Minister Chrystia Freeland was instructed in her ministerial mandate letter to “develop strategies to implement” the CETA, which, according to Global Affairs Canada spokesperson Diana Khaddaj, means finding ways to help businesses profit from the deal.

The two sides are still working through the legal review and translation of the text, say spokespeople for Canada’s foreign ministry, the European Commission and the EU delegation to Canada.

Steve Verheul, Canada’s chief negotiator for CETA, is headed to Brussels where he will take part in a “workshop” on CETA organized by the European Parliament’s trade committee and meet with officials from the European Commission to discuss “next steps” for the agreement, according to Ms. Khaddaj.

Once the European Commission finishes its legal scrub and translation of the CETA, it goes to a vote before the EU Parliament. As things stand, the parliament could turn down the agreement, says Jason Langrish, executive director of the Canada Europe Round Table for Business, which advocates for freer trade between the two jurisdictions.

European politicians and advocacy groups are curious about Canada’s new prime minister, and how he will approach CETA and investor-state arbitration, says Sujata Dey, a trade campaigner with the Council of Canadians who spent the month of November in Europe trying to raise political opposition to the deal.

“The question is now, ‘what is Trudeau going to do?’” she said.

Canada could agree to “tweak” the investor-arbitration clauses in the agreement, possibly to bring them closer to the investor-state dispute system proposed by the European Commission for the EU-US deal, in which publicly-appointed judges would hear cases instead of private arbitrators, said Mr. Langrish.

However, that compromise may not go far enough for opponents of investor-state arbitration, he said.

The Council of Canadians would oppose such a move, as it would still create a system akin to “public insurance for large corporations,” said Ms. Dey.

The Canadian Chamber of Commerce likely wouldn’t support such a move either, said Cam Vidler, the chamber’s director of international policy. Canadian business won’t want to be a “guinea pig” for an untested investor-state arbitration system, he said.

Canada should push the EU to implement the deal as is, and if that isn't possible, cut out investor-state arbitration entirely and move forward with the parts of the deal both parties can agree to, he said.

Canada and the EU could revisit investor-state arbitration at a later date, likely once the EU and US agree on a model for it in their trade agreement, he said.

But that third option may not be as easy as it seems, said Mr. Langrish.

The European Commission will be wary of finishing a free trade agreement without an investment chapter. That could set a precedent for future negotiations, and undermine the commission's negotiating authority within Europe.

"There is no easy answer left anymore," he said.