

EU copyright demands chill trade experts

By: Anca Gurzu

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A recently leaked chapter of the trade deal Canada is negotiating with the European Union shows the 27-member bloc demanding what one expert described as a "complete overhaul" of Canada's intellectual property laws.

While some say the EU demands are a natural part of a negotiation process, legal and trade experts are seriously concerned over the depth and potential consequences of their implementation—and what it says about the trade negotiations as a whole.

Embassy reported at the end of January on an internal European Union strategy document, which blasted Canada's intellectual property and copyright laws and noted the lack of political will to make legislative changes.

The new documents feature a draft chapter that includes proposals to extend an author's term to copyright; additional copyright term extensions for audiovisual, anonymous and unpublished works; a change to Canada's procedures for trademark registration; additional protection to block disclosure of pharmaceutical data; and compliance with several international treaties.

The chapter also includes several new rights for broadcasters, which Michael Geist, law professor and copyright expert at the University of Ottawa, said would force public places, such as sports bars, to pay additional fees to air European channels.

Mr. Geist described the EU demands as "stunning" and "a complete overhaul of our intellectual property system."

"The EU's approach is to simply take its rules and require Canada to adopt them," Mr. Geist wrote in an email.

Officials from the European Union and Canada will meet in Ottawa on April 19 for the third round of negotiations for a Comprehensive Economic and Trade Agreement.

The leak of the intellectual property rights chapter comes after *Embassy* reported on Feb. 24 that the European Commission is targeting Canada Post and provincial liquor boards in their trade talks. The EU has also expressed its displeasure with Ontario for its reluctance to open its doors to procurement.

Free trade agreements normally aim to reduce duties for goods and liberalize services, followed by a focus on investment and mobility of people, while government procurement and intellectual property laws usually come later in the negotiations, said Cyndee Todgham Cherniak, trade lawyer with Toronto-based group Lang Michener LLP.

"Up front we are dealing with these more fringe issues, so I am concerned we are already getting off track, considering what is being leaked," Ms. Todgham Cherniak said. "This is a little inconsistent [with the idea of trade promotion], especially since the IP chapter creates significant obligations which create obstacles to trade, as opposed to opening doors for trade to occur."

She was surprised to read the depth of the EU demands.

"My first reaction was 'Oh my goodness, I can't believe the EU thinks so poorly of Canada's intellectual property laws,'" she said. "I didn't realize we are the Zimbabwe or Somalia of intellectual property, that we are so bad that all of these demands have to be made."

Ms. Todgham Cherniak, who said she has seen many free trade agreement drafts throughout her career, describes the leaked chapter as going well beyond the usual international property obligations.

"I've never come across anything like this before. This is really a very extensive expansion of what is normal," she said. "We knew it is going to be comprehensive...but if this is an indication of how other chapters will look like, then we are looking to see something quite different than any form of free trade agreement we have."

A former Canadian top trade official described the leaked intellectual property chapter as a reflection of "the new generation of free trade agreements"—a commercial agreement that is trying to tackle business regulation, such as intellectual property laws.

"The issue that I have with doing complex business regulations like these in a trade agreement is worrying whether this is the right context," said Dan Ciuriak, former deputy chief economist at the International Trade department.

Trade liberalization is a simple process because it will benefit both parties involved, he said, but intellectual property laws are a complicated area, which may have unintended consequences and "depend on the context in which they are embedded."

The government has recently concluded a consultation process with Canadians and will introduce new copyright and intellectual property legislation during this parliamentary session, according to an Industry Canada spokesperson.

Regarding the EU free trade negotiations, the spokesperson said CETA is based on Canadian laws and policies.

"Before becoming party to any agreement, Canada would need to be satisfied that it reflected the Canadian interest," the spokesperson wrote.

Canada should proceed cautiously, Mr. Ciuriak said.

"To take on the whole corpus of European regulations, without context, without understanding how it works in Canada and whether or not it would address Canada's innovation problem would, I think, be a problem."

But the EU's position should not come as a surprise, said Jason Langrish, executive director of the Canada-Europe Roundtable for Business, representing the interests of both Canadian and European businesses.

"It's a negotiation," he said. "You would expect that at this stage in the game the Europeans would put forward an aggressive position."

Mr. Langrish said the main issue is not market access, since—according to his understanding—the two parties have already privately agreed on duty-free policies on almost all goods.

"So what they need to do now is look where the remaining sensitivities are."

Mr. Langrish pointed out the chapter is only in its draft form, and that the EU understands not all proposals will be adopted.

"What would be the point of negotiating and saying 'This is what we are willing to settle for?' No one would do that," Mr. Langrish said. "In a negotiation you say this is the absolute best we could hope for and then you move backwards. I doubt very much that the Europeans are hoping to change our regulations."

Ms. Todgham Cherniak said she is still in favour of the agreement, but "it is disappointing to see what is coming in at this point in time."

"It signals to me that there are some serious conflicts and obstacles that will slow down the process and we need the market access agreement sooner rather than later to create jobs," she said. "It means it will be years down the road until our economy can benefit from it."