

EU takes aim at Canada Post, Ontario Green Energy Act

By Lee Berthiaume
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Canada Post, provincial liquor boards across the country and Ontario's new Green Energy Act are all being targeted by the European Union in its trade talks with Canada, confidential EU briefing notes show.

While none are considered deal breakers, several touch on long-standing irritants between the two sides and go a long way to revealing just how far-reaching a deal negotiations are hoping for.

Last May, the Ontario government passed the Green Energy Act. The intent was to lay the foundation for a new renewable energy industry in the province.

One of the key aspects was feed-in tariffs, in which the government pays individuals, communities and businesses that generate electricity from renewable sources like solar or wind. The idea is to offset the cost of implementing such projects.

However, in order to take advantage of the feed-in tariff program, or FIT program, a certain percentage of the project must include provincially-made goods and labour. The requirements are:

- n Wind projects—25 per cent local content between now and Jan. 1, 2012, and 50 per cent thereafter.
- n Solar projects of 10 kW or less—40 per cent before Jan. 1, 2011, and 60 per cent afterward;
- n Solar projects over 10 kW—50 per cent before Jan. 1, 2011, and 60 per cent afterward.

"The idea behind the domestic content regulations is to encourage investment, green manufacturing and construction and installation jobs in Ontario," reads one of the EU documents.

A second document (neither are dated) reads that the EU's objective is "to convince the governments of Ontario and Canada to abandon the requirement to use domestically produced equipment to produce renewable electricity in order to benefit from high feed-in tariffs." It goes on to state that the medium-term objective is to avoid the Ontario initiative becoming a precedent for other provinces.

"The policy adopted by Ontario creates a risk that other provinces in Canada will copy this policy and thereby effectively reduce the possibilities for EU producers of renewable energy equipment to sell their products to Canada," reads the document.

Under a section entitled "Message to be conveyed," the EU alleges that the FIT program may not be consistent with Canada's international trade obligations under the WTO or GATT. It also states that "the acquisition of electricity at above-market prices by OPA could constitute a subsidy to electricity producers."

The document states that "this issue has been raised both with the Canadian federal government and with the government of Ontario in the framework of the [Canada-EU trade agreement] negotiations."

The European Union delegation in Ottawa did not respond to questions by press time.

A spokeswoman for Ontario Energy Minister Brad Duguid defended the province's Green Energy Act.

"Our approach strikes a balance between helping Ontario build a green economy while welcoming investment from outside the province," said Amy Tang in an email.

In an email, Trade Minister Peter Van Loan said only that "Canada is committed to negotiating a comprehensive agreement that will open doors for business and help create jobs" and that "provinces and territories are participating directly in negotiations in areas that fall in whole or in part under their jurisdiction."

LCBO discriminatory?

Another area the EU is focusing on is the provincial liquor boards, in particular those in Ontario, Quebec and, to a lesser degree, British Columbia.

According to one document, alcoholic beverages were the European Union's largest agricultural export in 2008 at more than \$1 billion. And yet, reads another document, "the practices of provincial liquor boards appear discriminatory and substantially hinder the access of European alcoholic beverages to the Canadian market."

Such actions include lack of transparency when it comes to board decisions on which alcohols to sell, imposing onerous conditions for suppliers hoping to list their products, lower mark-ups for domestic spirits and extra costs for imported products.

"All of these discriminatory practices raise the cost of imports and hinder entry into the Canadian market by producers of European alcoholic beverages," reads the document, "thus putting them at a competitive disadvantage vis-à-vis domestic suppliers and partly also vis-à-vis importers from third countries."

Provincial liquor board officials refuted suggestions European products and producers were being discriminated against, noting Canada and the EU reached two agreements on the issue, one in 1989 and most recently in June 2004.

"British Columbia's liquor mark-ups and other pricing policies comply with the existing agreement between Canada and the European Union on Trade in Wines and Spirits," BC Ministry of Housing and Social Development spokesman Seumas Gordon wrote in an email. "In 2009, sales of European Union products in British Columbia amounted to \$500 million."

Chris Layton, a spokesman for the Liquor Control Board of Ontario, also disputed allegations European products were being discriminated against. He said that in the last fiscal year, EU wine sales totaled 38.3 per cent of all sales, or \$561 million. Spirits accounted for 30.4 per cent, or \$538 million.

"I think the numbers speak for themselves," he said. "The business that European countries do at the LCBO is pretty substantial.... The interesting thing is what we more commonly hear here in the province of Ontario is what more can you do to support domestic products."

Mr. Layton said the LCBO also does many promotions with European products, and has been transparent in its decisions on which products to purchase.

Jan Westcott, president of the Association of Canadian Distillers, said he's not surprised the EU is looking at the provincial liquor boards in its trade talks with Canada.

"These are negotiations and you throw everything, including the kitchen sink, forward," he said, "whether the claim is legitimate or partially illegitimate. And a lot of the stuff that is being said is not legitimate."

Mr. Westcott said the industry has had a chance to brief the federal government about its position and concerns, including its desire to see some tariff reductions implemented by the Europeans. The industry has also been kept abreast of developments as the negotiations have gone ahead. (Two rounds have already been held, with a third round scheduled for April.) But he doesn't think it will be a major part of the negotiations.

"It's hard for me to believe that any of these could be sort of lynchpin sort of things," he said. "Beverage and alcohol tend to be one of the smaller categories, it tends to be left late, and then there tends to be some horsetrading at the end."

Canada Post 'monopoly'

The EU is also focusing on what appears to be an unusual Canada Post monopoly.

For the past 20 years or so, a number of private companies have been circumventing the state-run postal carrier by shipping large batches of brochures or other documents from Canada to developing countries where they are then individually mailed at lower rates.

In August 2004, the Supreme Court affirmed Canada Post has exclusive rights to collecting, transmitting and delivering all mail, including letters addressed to foreign destinations. Despite this, an injunction has kept those companies operating, at least until December 2010.

The government has twice introduced legislation to amend the law to allow foreign companies—including those from the EU—to continue operating. but the 2008 election and most recently the December prorogation of Parliament put an end to those plans. While the government is expected to reintroduce legislation in the next session, no one knows when—or even if—it will be adopted, a fact recognized in the documents.

As legislative proceedings can take a long time, for the moment a degree of uncertainty remains for operators in the market," the document reads, "with further legal actions by Canada Post a possible threat. The threat of expulsion from the market has, in fact, only been postponed at present but not averted."

Liberal Canada Post critic Bonnie Crombie said it was unfortunate Parliament was prorogued, because her party was ready to work with the government to iron out the problem which is largely caused by a difference in the French and English versions of the law. However, she said any moves to deregulate or privatize Canada Post will be opposed.

Jason Langrish, executive director of the Canada-Europe Roundtable for Business, said each of the three areas is linked to larger issues being negotiated by the two sides, such as procurement and services.

"You need these specific examples to get movement," he said. "And I think that's important. But at the same time it's sort of a chicken and egg thing. You also have to get a general structure in place and if you start focusing too much on the individual and get to the game of horsetrading too early, then you really don't create an agreement that's going to stand any test of time."

However, Mr. Langrish didn't believe any of the issues would scuttle a potential Canada-EU deal. Rather, he said the EU has a tradition of being aggressive in negotiations, and focusing on specific areas may be part of that tactic because "it's a lot easier to get out in front on these issues than it is to always be playing catch up."