

GLOBE EDITORIAL

The Canada-EU free trade deal is still very much alive

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Don't panic. In fact, don't even worry. Reports that Germany is having 11th-hour misgivings about international arbitrations – on the investment-protection chapter of the Comprehensive Economic and Trade Agreement (CETA) between the European Union and Canada – amount to an inconvenience, not a fatal shock to the whole treaty.

The point of a free trade agreement is to free trade. And CETA can do that, lowering tariffs and opening up markets between Europe and Canada, without the need to create additional procedures protecting cross-border investors. As international trade lawyer Lawrence Herman points out, “investor-state dispute settlement” arbitrations were invented to protect developed-world companies from capricious actions by governments of countries without developed-world legal standards. But as between countries such as Canada and Germany, there is little to be feared from two similarly independent judiciaries.

International arbitrators do not add up to a court system; sometimes they don't have much understanding of one or other of the countries involved, or indeed either of them. National judiciaries may be able to deal better with some of these disputes.

There are many who believe the best free trade deals have investor-state dispute settlement mechanisms built into them. Maybe. But there's no question that free trade deals without them are still hugely economically positive, and that it's possible to liberalize international trade without necessarily creating new, supra-national arrangements to protect cross-border investors. Japan and Australia recently concluded such a free trade deal.

And in any case, Canada has assiduously pursued bilateral “foreign investment promotion and protection” agreements, or FIPAs, with many countries, and has concluded them with seven EU members.

CETA is not dead. Not even close. Yes, Germany should have raised these objections years ago. But it's possible to address Germany's concerns – and still reach a Canada-Europe free trade deal.