Germany won’t block Canada-Europe trade deal despite investor-state clause

BARRIE MCKENNA
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Germany has dropped its objection to the controversial investor protections in the Canada-Europe free-trade agreement, clearing the way for the deal to take effect in 2016 as planned.

German Economy Minister Sigmar Gabriel, a vocal critic of the deal’s investor-state provisions, now says his country won’t stand in the way of ratification.“If the rest of Europe wants this agreement, then Germany will agree too. There’s no other option,” Mr. Gabriel told the lower house of the Bundestag, Germany’s parliament.

Opting out of EU trade agreements would be a “disaster” for a country that depends on exports, he added. “Our children will curse us.”

In September, Canada and the European Union released the text of a trade agreement that has already been five years in the making.

But reservations within Germany’s coalition government have continued to cast doubt on the outcome of the protracted ratification process in Europe. The deal must be approved by the European Parliament, and key parts may also have to be voted on by legislatures in all 28 EU member states.

“This removes a cloud that did exist and increases the likelihood that [the Comprehensive Economic and Trade Agreement] will come into force in 2016,” explained Riyaz Dattu, a partner and trade and investment specialist at the Osler law firm in Toronto. “This puts us back on the timetable.”

The investor-state clause, which allows private investors to seek compensation from governments for unfair treatment, has become a lightning rod for opponents of the Comprehensive Economic and Trade Agreement (CETA). Critics worry that such lawsuits will tilt the balance of power to large multinationals and undermine environmental, labour and health standards across Europe.

Mr. Dattu pointed out that Germany was the first country anywhere to sign an investment treaty (with Pakistan in 1959) and it now has dozens of such deals in place around the world. He said such provisions are increasingly becoming a standard feature of regional free-trade deals, such as CETA.

“It’s not surprising that at the end of the day Germany saw the light,” Mr. Dattu said.

The possibility that Germany might not endorse the deal’s investor-state rules could have scuttled or delayed the entire agreement, said John Boscariol, head of the international trade and investment group at law firm McCarthy Tétrault in Toronto. “If we were facing a situation where investor-state was not going to apply for the largest member of the EU, that could have significantly threatened the deal,” Mr. Boscariol said.

This could all work out to Canada’s advantage. European angst about investor lawsuits is mainly focused on the U.S., which is also negotiating a free-trade deal with the EU. At best, Canada will gain preferential access to Europe if the U.S. deal falters. At worst, Canada will get there with a head start.

“If we go ahead with CETA and there is no U.S. deal, U.S. companies could move manufacturing and other operations to Canada to be able to access that market,” Mr. Boscariol explained. “That’s a pretty big deal for Canada.”

German criticisms of CETA have so far come from Mr. Gabriel’s Social Democratic Party, which is a junior partner in a coalition government with the Christian Democratic Union party led by Chancellor Angela Merkel.