Stop the Corporate Giveaway!

A transatlantic plea for sanity in the EU–Canada CETA negotiations

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On 18 October 2013, European Commission President José Manuel Barroso and Canadian Prime Minister Steven Harper announced the conclusion of the negotiations on a European Union–Canada Comprehensive Economic and Trade Agreement (CETA). This "next generation" free trade agreement will include a controversial and unnecessary investment protection chapter and investor-to-state dispute settlement process (ISDS) that a growing number of countries are rejecting for good reasons. These excessive corporate protections, built into thousands of investment treaties and free trade agreements, serve no social or economic purpose other than to undermine our democratic rights to decide public policy and public interest regulation. In spite of the 18 October "Harper-Barroso deal", negotiations on investment protection and ISDS continue. We call upon European and Canadian governments at all levels (e.g. member state, province, municipalities, federal and EU parliament) to protest the inclusion of these extreme investor "rights" in the CETA for the following reasons:

1. We are locking in the corporate status-quo forever: CETA will permanently freeze existing rules governing investment and then strictly limit government regulation of services, investment, natural resources, environmental protection and public safety measures in the interests of corporations. All existing government policies in all these areas that have not been excluded from the agreement up front will be covered, making it difficult for countries to introduce new services or regulations in the future that affect however modestly the investment opportunities of foreign companies and investors.

2. There is no way to tame this investor "rights" model: There is no comfort in claims by the Commission or Canadian government that "frivolous" claims, or challenges to environmental policy, will be filtered out. Despite efforts in the North American Free Trade Agreement (NAFTA) to limit what kinds of government decisions might violate an investor's minimum standards of treatment or other investment chapter protections, Canada continues to face investor-state disputes attacking environmental measures that affect national and foreign investors in exactly the same way (e.g. a partial moratorium on shale gas extraction in Quebec). Likewise, we are not satisfied by efforts to limit the meaning of "indirect expropriation" so that legitimate public welfare objectives should be immune from investor challenges. The final determination is always made by the private investment tribunals themselves, and these unaccountable tribunals have a built-in bias toward the interests of multinational corporations.

3. The very presence of ISDS puts a "chill" on environmental policy. CETA will include a screen for financial policy, since both sides recognize that investor lawsuits could scare governments away from introducing new financial regulations. But there is no screen for precautionary environmental, public health or resource conservation measures. For example, any regulation aimed at limiting the use of bituminous sands or shale gas could be challenged by European or Canadian corporations eager to exploit these "dirty" fuels. Is it because Canada and the EU want to put a chill on effective climate policy? There is no other interpretation. Not all cases related to environmental policy are won by investors but lawyers specializing in investment arbitration gloat about the use of these treaties in threatening to file investor-state lawsuits to pressure governments against new environmental policies.

4. Canadian and European courts can handle any investor dispute with government decisions. There is no reason to create an extra level of protection to foreign investors, above and outside the scope of domestic courts, as recognized by a European Parliament resolution in 2011 favouring a state-to-state dispute settlement process in CETA only. European and Canadian courts have a responsibility to balance corporate interests against the public interest. That balance does not exist in investment treaties or the ISDS process.

5. There is no conclusive evidence that these investor “rights” encourages new investment! Canadian government environmental assessments of recent investment treaties claim it is not possible to draw links between investment decisions and the existence of ISDS. Because of this uncertainty, and the evidence that investment treaties create unnecessary risks to environmental and other public policymaking, a Sustainability Impact Assessment of CETA urged the Commission not to include ISDS in the agreement.

6. CETA is a step-up/stepping stone for the bigger U.S.-EU TTIP: Whatever the EU gets away with in CETA, including on investment protection, will just create a new ground floor on which multinational corporations will build even more protections into the TTIP. There is urgency in pulling investor-state dispute settlement out of both negotiations. U.S. firms are the most prolific users of investment treaties, and the U.S. government is already targeting stricter European toxic regulations and the nascent Fuel Quality Directive as investment barriers that should be eliminated.

In conclusion, the CETA investments chapters come nowhere close and are in fact drifting further away from balancing the rights of sovereign nations to enact policies in the public interests with the responsibility to treat foreign investors fairly. If the CETA is signed and ratified with ISDS intact, Canadian and European democracy will suffer while corporations gain new tools to frustrate any number of policies designed to protect the environment, public health, public services, resource conservation and, crucially, to make our social-economies more sustainable and equitable. All political representatives at every level of government in the EU and Canada must call the investment negotiations in CETA to a hold and refuse to endorse the CETA until the extreme investor-state dispute settlement process has been taken out.