



EconoMag **Whose Judicial System Takes** **Precedence?**

by Alex Hurst

Hello and welcome to ECONOMAG from EnglishWaves Radio.

Last week, the Canada-Europe Trade Agreement, or CETA for short, went rapidly through ups and downs. The EU says that the treaty will lower tariffs, boosting exports and spurring investment, leading to new jobs. But at the last minute, it was blocked by the Belgian region of Wallonia, because of a specificity of Belgian politics, where the agreement of regional parliaments is required for the government to approve an international treaty. Wallonia ultimately backed down, but what the region, and so many voters across Europe, objected to is a provision called ISDS. Investor-State Dispute Resolution.

International trade agreements run up against this problem—whose judicial system takes precedence? And, though this problem is not a relevant one in the case of a treaty between the EU and Canada, what do you do when some country's judicial system isn't exactly highly developed and independent?

So enter ISDS. Which is effectively a private court system, arbitration tribunals that governments agree to place higher than their own courts in instances of trade disputes between two nations, or between private enterprise and one or more governments.

Now, that might initially sound like a logical idea. But for critics of ISDS, the problems lie in the way that it has been implemented. The judges who sit on arbitration panels aren't elected - they're pulled from the corporate and legal worlds, and barely any everyday citizens would know their names. Little recourse exists to "recall" them or to replace them. And yet they make decisions that overturn sovereign national law.

For instance, one of ISDS's most heavily criticized aspects has been a provision that allows corporations to sue governments for the lost *potential* profits they argue regulations—environmental, labor, etc—stopped them from earning. And this isn't just a hypothetical, or something that happens to nations with weak legal system and without the resources to mount massive international legal battles. Australia lost a case over regulations mandating that cigarettes be sold in plain packages, a regulation that had been upheld by its own supreme court. Argentina was sued successfully by international utility companies for having frozen electricity and water bills. A Canadian company sued El Salvador for 300 million dollars in anticipated future lost profits

because El Salvador refused to grant permission for a gold mine to proceed because it posed a threat to water supplies.

Ultimately, the deal that brought Wallonia back on board delays the introduction of ISDS, and also allows the entire ISDS regime to be challenged before the European Court of Justice.

So CETA may be out of the woods for the time being, but the shakeup over the past week could have two far-reaching consequences. One, it indicates that whatever treaty the UK wishes to negotiate after Brexit might be more complicated than policymakers think to get passed. And two, it also raises questions about who exactly makes decisions in Europe.

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