

Small and medium-sized enterprises from across Europe accuse Commissioner Malmström of misleading the public about investor rights in CETA

Press Release

Brussels, 10 October 2016

“American companies cannot use CETA as a backdoor” [1] for claiming investor rights against European governments. This is the message Commissioner Malmström spreads in an attempt to overcome the widespread misgivings about the Comprehensive Economic and Trade Agreement with Canada, which is due for signature. CETA opponents apparently “denigrate Canada to some form of US colony”. Fair Economy Alliance, a network of initiatives by small and medium-sized enterprises concerned about CETA/TTIP, is shocked by this attempt to mislead the public. Not only does Commissioner Malmström misrepresent the content of the CETA text, she also distracts from the capacity and reach of global economic actors.

While a US *branch* operation in Canada may not make use of CETA, a US *subsidiary* corporation will have access to all the preferences established by this agreement including extra-judicial privileges unavailable to domestic enterprises [2]. Cases involving this particular distinction are not unheard of.. [Lone-Pine Resources Inc. vs Government of Canada](#) is a clear example where a Calgary-based corporation launched a NAFTA challenge against the provincial government of Quebec via its subsidiary in the US tax haven of Delaware, in what is commonly called ‘treaty shopping’. Research highlights how this case in particular would still be possible under the revised ICS proposal in CETA [3].

Global economic actors like Bayer, Monsanto, Phillip Morris and Royal Dutch Shell are only a handful of the thousands of EU companies with subsidiaries and substantial business operations in Canada who could misuse these provisions to take the governments of their home countries to court. Of the 51,495 U.S.-owned subsidiaries currently operating in EU member states, 41,811 are owned by U.S. parent companies that also have subsidiaries in Canada [4].

Fair Economy Alliance is of the opinion that the Investor Court System foreseen in CETA “undermines the legal order across the EU, does not guard against abusive international investor behaviour, and discriminates against SMEs.” [5]

Commissioner Malmström is in favour of scrapping bilateral investment protection deals in the EU single market. [2] Yet she insists that investment protection is necessary in the deal with Canada. The doubts this casts on the Canadian legal order is what Canadians should be offended about rather than being portrayed as a US colony.

About us

Fair Economy Alliance (www.faireconomyalliance.eu) is a network of initiatives by small and medium-sized enterprises concerned about CETA/TTIP:

The organisations supporting this press release are: KMU gegen TTIP (Germany), KMU gegen TTIP (Austria), Ondernemers van Nu (Netherlands).

For the opposition of SMEs see lists of signatories on <http://www.kmu-gegen-ttip.de>, <http://www.kmu-gegen-ttip.at>, <http://www.ondernemersvanu.eu>

NOTES

[1] All quotes published in Politico EU on 29th September

<http://www.politico.eu/pro/politico-pro-morning-trade-romania-acts-on-investment-protection-competitiveness-ranking-steel-talks/>

[2] CETA Consolidated Text. Chapter Eight 'Investment, Section A 'Definitions and Scope', Article 8.1 'Definitions':

“investor means a Party, a natural person or an enterprise of a Party, other than a branch or a representative office, that seeks to make, is making or has made an investment in the territory of the other Party
locally established enterprise means a juridical person that is constituted or organised under the laws of the respondent and that an investor of the other Party owns or controls directly or indirectly”

[3] Investor Court System put to the test: Page 19-22

https://corporateurope.org/sites/default/files/attachments/icstest_web.pdf

[4] Tens of thousands of US firms would obtain new powers to launch investor-state attacks against European policies via CETA and TTIP

<https://www.citizen.org/documents/EU-ISDS-liability.pdf>

[5] See the position paper “The Comprehensive Economic and Trade Agreement between the EU and Canada: threatening to do more harm than good to SMEs“: http://projekt-more.eu/wp-content/uploads/2016/09/2016-08-29-CETA-and-SMEs_EN_SchSt.pdf

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The initiatives are also directed against CETA and TISA.