



Foreign investors

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SIR – There was one important issue missing from your leader on investor-state dispute settlement (ISDS) (“[A better way to arbitrate](#)”, October 11th). This is the provision in most investment treaties that requires governments to provide “fair and equitable” treatment to foreign investors. Lawyers see this as a wonderfully open-ended clause that can be used to challenge a wide range of government behaviour. The potential for lawsuits is limited only by the creativity of the lawyers involved.

In the trade negotiations between Canada and the European Union new language has been offered to try to narrow the standard, but the new terms only serve to emphasise how broad it is. Any effort to reform ISDS has to address the problems caused by the fair-and-equitable standard. Taking it out completely is probably the only effective way to do this. Refocusing the rules towards government actions that actually discriminate against foreigners—as opposed to some vague and amorphous standard like “fair and equitable”—is a good way to promote foreign investment and maintain governments’ regulatory authority.

As it is currently structured, ISDS provides for international judicial review of all government actions, for foreign investors only (oppressed minorities are out of luck). That is a controversial proposition, one that should not be entered into lightly or given an overly broad scope.

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