

Assessment

of the Signed EU-Canada Trade Agreement CETA (Comprehensive Economic and Trade Agreement) and the Adopted Supplementary Declarations

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Previous Positions and Proposals of the DGB

Already in late 2014, the DGB had called for rejecting the published outcome of the CETA negotiations and demanded renegotiations – a position that was confirmed in early 2016. The criticism was, in particular:

- that CETA retained a problematic investment protection chapter and special rights for investors to sue states allowing foreign investors to challenge legitimate state regulation;
- that CETA does not contain effectively enforceable and sanctionable rules for the protection and improvement of workers' rights;
- that CETA followed a negative list approach and public services were not protected sufficiently.

In addition, the DGB demanded for CETA not to include liberalisation commitments regarding the movement of natural persons (Mode 4). At least the place of work principle for posted workers must be guaranteed from the first day. Furthermore, the precautionary principle applicable in the EU must be bindingly anchored and protected. Social-ecological standards in public procurement may not constitute a barrier to trade.

The DGB is convinced that we need a good trade agreement with Canada. The implementation of an agreement committed to designing open markets and free trade based on criteria of a fair globalisation while ensuring that workers' rights can be maintained and developed at the national and international level could help to win the citizens' trust and would be a sign against the revival of protectionism and nationalism, which threaten to gain new momentum after the outcome of the US presidential elections. In the currently present form, however, the DGB finds that the Agreement and the Joint Interpretative Instrument (JII), do not sufficiently meet the requirements. Therefore, the DGB sees it as the duty of the parliamentarians, particularly at European and also at national level, to only agree to provisional application and subsequent ratification of CETA and the JII if improvements in the areas below are achieved.

Confederation of German Trade Unions (DGB)
Department for Economic, Fiscal, and Tax Policy

Nora Rohde & Florian Moritz
International and European Economic Policy

Nora.Rohde@dgb.de

Phone: 0049-30-24 060-248
Henriette-Herz-Platz 2
D 10178 Berlin

www.dgb.de



CETA Supplemental Declarations

As part of the signing on 30 October 2016, several declarations of the CETA parties were concluded: Together with the text of the Agreement, a Joint Interpretative Instrument (JII) between the EU and Canada and 38 unilateral declarations by individual EU members, the Commission and the Council have been adopted.

The JII and some of the unilateral declarations include some clarifications (e.g. on the procedural aspect of the Investment Court System, on the appointment of arbitrators, etc.), which may facilitate an interpretation of the main text in case of dispute, should the document be used for interpretation. However, many items are obviously only a mere clarification or illustration of elements of the main text, as the Commission itself emphasizes, and thus create no change or improvement in the CETA rules themselves.

The core problems highlighted by the DGB in CETA have not been comprehensively solved.

- Investment protection: It is true that the JII says that foreign investors should not be treated better than domestic ones. However, this can only be ensured if the substantive rights to fair and equitable treatment and protection against expropriation are invalidated, which is not the case in the JII. In addition, the European Commission unilaterally declared that it wants to support small and medium sized enterprises technically and financially in using the new legal remedies. This would lead to an expansion of arbitration processes and not curb them.
- Public services: The JII underlines the right of states to be able to define public services, provide them in full, regulate them and re-communalise them. However, this obviously does not rule out that these measures can result in disputes between investors and states. In order to counter this and other problems, the DGB calls for a broad and comprehensive exclusion of public services from the Agreement. Our proposed text - adopted by Prof. Krajewski - is not found either in the Agreement or in the Declaration.
- Public procurement: Socio-ecological criteria may be applied according to the JII as long as they do not constitute an "unnecessary obstacle". This limitation makes the criteria vulnerable.
- Precautionary principle: The parties confirm their precautionary obligations, which they have entered into in international agreements. However, this says nothing about the primacy of the precautionary principle with respect to the rules of the CETA. It is the case that there is a declaration of the European Commission, which refers to the precautionary principle in the European treaties. This is an important clarification, but due to its form (unilateral declaration) it probably has only limited effect.
- Workers' social and environmental standards: The JII does not speak of specific (financial) sanctions in case of breaches of these rights. Although it is mentioned that these rights must not be watered down in order to attract trade and investment, it remains an open question as to what practical consequences a violation would have. A move away from the EU approach of resolving disputes only through mediation and consultation is not evident.



In principle, the binding nature and formal effectiveness of the supplementary declarations remains questionable. The 38 unilateral declarations of individual EU member states, the European Commission and the Council in any case have a less binding character than the JII, because they do not reflect a common position of the Parties.

The DGB concludes that the existing documents are insufficient to eliminate trade union concerns. This assessment is also based, according to legal estimation, on the existing legal possibilities of making improvements as proposed by trade unions, even before the signing of the Agreement. However, these possibilities have not been fully exploited.

Precisely because parts of the Agreement are - according to the Council Decision - supposed to be applied provisionally once approved by the European Parliament, the efforts on the part of parliamentarians at the EU and national levels now have to be all the greater to fix the most serious problems of CETA. Ratification is to be agreed to solely on the condition that the core criticism on investment protection, public services, and the rules for workers' and environmental rights are addressed effectively.