In November 2016, the German Greens adopted the following resolution on fair trade deals and CETA:

New start for fair trade – don't approve the CETA agreement

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Through the categorisation of CETA as a mixed agreement we Greens will vote on the agreement in the European Parliament and in the Bundestag [lower house of the German Parliament]. In the Bundesrat [upper house of the German Parliament] the governments of the Länder [federal states] with Green participation in government will decide on the ratification. After years of explanation, protests and political controversy the time has now come to make an assessment, to set out the criteria defined by us and to evaluate the text of the agreement as a party.

I Green criteria for fair trade

International trade agreements can have a positive impact on global standards and can harmonise them in a reasonable way. The advantages of multilateral agreements, which are agreed by a big group of agreement partners outweigh in this respect bilateral agreements such as those that are currently being attempted between the EU and many other countries, including Canada or the US. And last but not least after the deal reached on the Paris climate agreement, international trade must urgently be reformed and changed to correspond to the goals of a sustainable transformation. We Greens have therefore defined comprehensive criteria for trade agreements that meet these demands:

- Multilateral solutions take priority for us over bilateral agreements, which can always only be the second best solution.
- Existing levels of protection must not be lowered when standards in the areas of consumer protection, worker protection, environmental protection, data protection, social security, public services, culture and education are being contested or weakened. Instead of this, strengthening and extension of standards must become maxims of trade policy.
- There must be no special complaints rights created for investors.
- The negotiations should take place with the greatest possible transparency. A comprehensive and earliest possible briefing of the European Parliament, the Bundestag and the Bundesrat is included in that.
- The European precautionary principle must be preserved. Its position in international trade policy should be strengthened. That was not achieved with the reference back to the WTO rules, as was done in the context of the additional explanation with CETA. The

opposite took place. The European precautionary principle has been buried up until now with the interpretation of these agreements. We are demanding that the European precautionary principle is anchored in future agreements. Only in that way can we keep our authorisation and import rules for genetically modified organisms and the ban on the use of hormones for fattening purposes as well as developing the necessary further development for the protection of human beings and the environment in other areas such as pesticides. From that follows, inter alia, maintaining authorisation and import rules for genetically modified organisms and the ban on the use of hormones for fattening purposes.

- The development of sustainable agriculture and livestock farming must not be undermined. That includes protecting regional produce, quality assurance in the food chain and no further monopolisation of agricultural structures. With market openings in the agriculture area, the EU should retain the possibility of using WTO protection clauses in the case of market imbalances.
- Trade agreements must support the aims of the Paris world climate change agreement and the conversion of fossil to renewable energies.
- Culture should be taken out of the regulation area of the agreement across the board in order to maintain member state cultural sovereignty.
- The rights of employees must be protected and the application of ILO core labour standards must be strengthened.
- Additional privatisation or liberalisation pressure on the public services must not be exerted – renationalisations must continue to be possible. So as not to limit the local authorities' freedom to decide, public services must be completely taken out of the scope of the agreement.
- In addition the European principle of subsidiarity must be comprehensively heeded.

Therefore, from the point of view of the Greens, there needs to be a new start for European trade policy. Trade must be organised in such a way that it makes sustainable wellbeing and quality of life, social justice and the independent development of all countries possible and contributes to the realisation of human rights. Consultations on trade policy issues should be not only possible but standard – and their results should experience another consideration than the results of the consultation on investment protection, in which 97% of those polled spoke out against courts of arbitration without that having had a discernible effect. Negotiating mandates must no longer be dealt with by the Commission as 'internal legislative procedures', to which European citizens' initiatives are inadmissible.

Negotiating trade agreements as whole packages stands against democratic decision-making process in the view of Bündnis 90/Die Grünen [Alliance 90/The Greens]. Where big packages are negotiated in very different matters (reductions in customs, regulation cooperation, market openings and investment protection inter alia) across such different sectors as energy, agriculture and culture, at the end certain positions threaten to be thrown out as part of the deal. We therefore see it as necessary to have a binding and comprehensive participation of the European Parliament in the preparation of the mandate as well as the granting of the mandate as well as a debate over whether the 'everything is negotiated in a package' principle does not run counter to a transparent negotiating process.

The debates in recent months about the issue of the categorisation of the CETA agreement as a mixed agreement was symptomatic of an impasse in which EU trade policy has manoeuvred itself. We GREENS sign up to a common European trade policy with regard to the debate about CETA and TTIP. With regard to the wrangling about the question of whether CETA was being put forward as a mixed or 'EU only' agreement, more consistent attention to competences in trade policy is needed. It is not comprehensible why the German government did not demand an explanation of this issue earlier. The fact that the Commission has not presented a proposal for an exception for parts of the provisional application, which (also) fall within national competences, has also contributed to exacerbating the situation.

II Investor-State-Lawsuits: Corporate jurisdiction with a new look

The CETA agreement at hand is not compatible with this comprehensive catalogue of criteria. By contrast it contradicts them in the central points of our conception of fair world trade.

For good reasons we Greens reject the special right to take legal action for international concerns. Practice up until now has shown that so-called 'Investor-State courts of arbitration' are being used by transnational concerns in order condemn decisions of democratically elected governments and to sue states for compensation payments.

The EU, US and Canada have functioning justice systems that are geared around principles based on the rule of law. It is therefore not understandable why a system needs to give foreign investors an exclusive, additional privilege to take legal action, which is not available to national investors, other groups in society or the state itself. Investor-State arbitration proceedings also create a parallel structure to national law in that it gives precedence neither to national legal paths nor to a national court dealing with legal disputes.

With regard to the massive criticism towards the traditional private courts of arbitration, the European Commission has slightly changed the usual system in the CETA agreement. The new Investment Court System cannot invalidate our concerns. Neither the envisaged procedure for the appointment of the 'judges' of the Investment Court System (ICS) nor their post satisfies international demands for the independence of courts. 'Judges' of the ICS have a material incentive to raise the number of promising cases of lawsuits.

The envisaged 'right to regulate' remains too unspecific and would only inadequately protect the state's regulatory sovereignty. Much more, investors would be able to base themselves on farreaching interpretable and onesided selectable legal concepts such as a 'fair and just treatment' and 'legitimate expectations' in order to take legal steps against democratic regulations, which limit their business practices. The German Association of Judges has put forward deep misgivings about the establishment of the ICS: "The German Association of Judges has considerable doubts about the competence of the EU to set up an ICS. Through the ICS the power of the EU and EU member states to take legal action would not only be limited but the established court system inside the EU member states and the EU would be changed."

Experiences from other trade agreements such as NAFTA, the North American Free Trade Area, show that such lawsuits are often directed against environmental laws. As a result, according to this, it would above all be Green policy put under unreasonable reservation, possibly leading to damage claims and compensations running to several billions of euro. The latest example is the lawsuit of the Canadian energy concern TransCanada against the US. Because the US had prohibited the extension of the Keystone oil pipeline on environmental grounds, TransCanada recently delivered a lawsuit to an Investor-State court of arbitration and is demanding damages of around 15 billion US dollars.

Already now, around a third of existing investment protection agreements which Germany has concluded have no Investor-State arbitration mechanism. Nevertheless, investments in these countries are specially protected through the agreement and can be safeguarded by a public investment guarantee. We demand the renegotiation of all investment protection agreements concluded up to now with the aim of removing arrangements for Investor-State courts of arbitration from the agreements. That is why we need a multilateral approach so that a balanced administration of justice can take place, which does not onesidedly give investor interests precedence over public interests.

III Harmonisation to a low level of protection

With CETA efforts are being made for the mutual recognition and harmonisation of product standards. Concretely the agreement amounts to diluting and cancelling important political rules and instruments of consumer protection. The precautionary principle, an essential feature of European authorisation procedures, is being downgraded because of CETA. From a protected guiding principle, it is becoming a piece of marginalia of an individual subchapter in the text of the agreement. Instead of that, the North American approach to risk checking is being upgraded. Through that the legal basis of preventative production and import bans on goods fraught with risk is being buried. According to that dangerous goods would have to be authorised unless their dangerousness is proven beyond doubt (through cases of deaths or repeatedly emerging negative long term consequences).

European standards in agriculture and food production would also be softened by CETA. The agreed cooperation in genetic impurities, the so-called ‘low level presence’ in export goods, would weaken the hitherto zero tolerance policy. With the new guiding principle of science-based authorisation, the opt-out rule in force would begin to totter. Up til now it has allowed individual EU member states not to approve the cultivation of genetically modified plants.

In addition, in Canada there is no protection system of geographical indications of source. Of several thousand indications of source such as for example Schwarzwälder pork only 173 products are covered in the CETA agreement text. Also plans such as the labelling of meat and milk products, during whose production the animals were fed with genetically modified fodder, could, after the signing of CETA, no longer be implemented. The development of a more environmentally-friendly agriculture, which consumers can consciously take part in, is inadequately anchored and barely protected in the agreement.

In addition it is to be feared that the agreed reductions in tolls in the agreement in sensitive areas create competitive pressure which could lead to a replacement of products and

services with high standards by products which have been produced according to worse standards and that are therefore cheaper. Ratcheted up competition to the detriment of employees or standards in the named areas would be totally unacceptable. Particularly critical are customs reductions in the area of agriculture, especially for animal products if they are not combined in parallel with high standards, e.g. for animal protection. The latest discoveries about the circumstances in the stalls of association civil servants show how animal protection in globalised agriculture markets is falling under the radar which leads to the detriment of quantity and cost efficiency. EU trade policy must not give this a push forward through additional drastic market openings.

IV CETA endangers public services and state regulation

Public services represent lucrative sectors for investments for multinational businesses. An attempt is being made with CETA to open these further to private businesses and thus to push ahead the privatisation and liberalisation of public services and public goods. That concerns both the federal states and local authorities in particular. We Greens are against this loss of democracy.

Particularly problematic is the negative list approach applied here. Other than with positive lists, with which the WTO works, theoretically all public services are being opened up for businesses. Only the areas explicitly listed in the agreement are partially excluded from this privatisation pressure. Even the few exceptions will end up under onesided pressure and will be further eroded through the possibilities for lawsuits of businesses under the investment chapter. The example of water shows how porous the exceptions are. While formally the provision of drinking water does not have to be privatised, this regulation ends with waste water services, for which the exceptions regarding market access and equal treatment of foreign investors do not apply. Here as in other areas CETA is threatening local self-government.

As an end result, the CETA agreement amounts to eroding the scope and effectiveness of meaningful social-ecological regulations. Within the logic of the treaty, which deals with political decisions such as trade barriers, it is coherent to put a coordinating body before democratic institutions. In the planned regulatory cooperation economic interests could be taken into consideration as early as possible. Thereby a forum could emerge that informs lobbying groups and associations about new laws before responsible parliaments have the information and include it in their negotiations. As the working methods of the bodies is not adequately set out and the transparency of the body's work is not prescribed adequately in CETA, there is a big danger here that, in particular, financially strong lobby groups and associations will gain big opportunities for influence. CETA would practically set up an early warning system for economic lobby groups. Because only particularly financially strong lobbying organisations can afford this influence. The fact that such fears are not exaggerated has been shown, inter alia, by the watering down of the European directive on fuel quality. It was introduced in 2009 in order to reduce emissions from traffic by six per cent. For this purpose, various types of fuel are to be classified in order to better sort out the particularly climate-damaging ones, including fracking oil from Canada. Through a well-invested campaign oil companies and associations managed to influence the implementation rules of

the EU in their interests. In a different way than was originally planned, the composition of imported oil will no longer have to be disclosed – the classification of fuels therefore has no effects. This case should urge caution. Instead of having to extensively take care of official and documented contacts between associations and Members of Parliament, individual interests could receive strengthened informal and non-transparent possibilities for influence via CETA. And that could happen at a very early stage when the plan can still be changed in its basic orientation or completely blocked.

New mandates according to Green standards: stop CETA, TTIP and TISA

The CETA agreement at hand confirms in the overall picture the fears that we have expressed for a long time about the negative social and ecological effects of the trade agreement between the EU and Canada. Our criticism could not be met by latter negotiations.

We Greens criticise the basic orientation of the existing or negotiated free trade agreement, to which, next to CETA, TISA and TTIP also belong. In the common logic of CETA, TTIP and TISA, standards and regulations for the protection of human beings, nature and the environment are considered as trade barriers. A more effective environmental and consumer protection was not, by contrast, given as a goal of the negotiations. We reject regulatory cooperation in this form and a market opening for local services. The mandates decided by the Council are moving in principle in the wrong direction. They also overstep the narrow area of regulation of trade policy and encroach on the competences of member countries and the German federal states.

The potential for fair trade to raise living standards, to strengthen the rights of workers and to bring forward the ecological transformation of the economy were not exhausted as a type of approach. Instead of that, beyond the nice sounding preambles, the profit interests of institutional investors and transnational businesses dominate. The joint interpretative statement to the CETA agreement, which also came about at the behest of the German government is pure eyewash in order to calm the public and to assure party internal majorities. An expert opinion commissioned by the Green group in the Bundestag states that “the joint interpretative declaration does not meet the criticism so far on the CETA chapter for investment protection as legally secure improvements or solutions were not offered for any of the controversial or critical points”. For us Greens the following evaluation of the trade agreement between the EU and Canada comes out of our overall appraisal:

CETA contradicts the criteria which we Greens set down for fair trade agreements. The conference of Bündnis 90/Die Grünen [Alliance 90/The Greens] therefore expresses its rejection of the existing text of the agreement and call on Green decision-makers in Europe, Germany and the German federal states, not to approve the trade agreement.

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