

Resolution of the SPD Party Convention 19th of September

Global Trade Needs Progressive Rules

I. Our goal – progress for prosperity and fair trade

Globalisation needs fair rules. It is clear to the SPD that we want to manage global trade in a fair and equitable manner and ensure the primacy of politics against untamed market forces. This is our political aspiration. In the past century, Social Democracy has largely succeeded in containing capitalism and submitting it to socially fair rules within the national context. However, this process has not been completed with global capitalism. This is why efforts in the tradition of Willy Brandt's North-South dialogue need to be driven forward with more determination than in the past and include all parts of the world in order to achieve greater justice and sustainability. The justified criticism of the way this has been done so far must not only be reflected in international declarations, but must eventually lead to a change of politics: A different, fairer world is possible.

We know that progress towards a fairer and more equitable world trade system and increased prosperity for all is a goal that is not easy to reach in today's complex world. International cooperation is an indispensable element in achieving it. The common political and economic strength of the European Union will play an important role when it comes to asserting our ideas, values and standards against other regions of the world and anchoring them as far as possible in the global economic order of the future. This is even more true after the UK's BREXIT decision.

Therefore, an EU that is effective and competent in its trade, economic and development policies is essential. Progress in a world where other states and regions are eager, sometimes even aggressively eager, to secure their own competitive advantages and national interests can only be achieved, if at all, step-by-step and together with partners who share our interests.

Europe must not stand aside when standards and rules for the future are being negotiated – simply because there is a lot at stake. Without doubt, the best framework for such negotiations is the World Trade Organisation since this is a multilateral institution. But, at the moment, the WTO is largely blocked and unable to act. We will make every effort to overcome this blockade together with our partners in Europe and the rest of the world. In view of this blockade, bilateral trade agreements with major partners have increasingly become an alternative. Such bilateral agreements are sometimes of bad quality, lack social responsibility and do not seriously pursue ecological sustainability. The more this type of trade agreement becomes accepted – e.g. the US agreement with the Pacific States (TPP) – the higher the risk that their deficiencies will become consolidated practice. We social democrats therefore need to have an interest in concluding better trade agreements in order

to raise the standards in international trade instead of lowering them. Europe must set a good example by engaging in good, progressive and fair trade relations.

Many citizens and organisations are taking part in the discussions on the future of EU trade politics. Their strong public involvement is a statement in favour of fair trade. The SPD shares this commitment. Today, trade must indeed be both free and fair. But free trade is not automatically fair trade. Like all market relationships it needs clear social and ecological rules that are democratically legitimated. There should be no unlimited freedom of action in international trade either, as this would only make the strong stronger and the weak weaker. But the reverse also applies: fair trade cannot be achieved without free trade.

Good solutions for free AND fair world trade must be preceded by a broad public debate. Transparency is needed in the shaping of globalisation and trade agreements. The current lack of transparency in EU trade policies must definitely come to an end.

It is against this background that we fundamentally welcomed and supported initiation of negotiations on a Transatlantic Free Trade Agreement with the USA in our government programme and the coalition agreement in 2013. At the same time, we formulated clear criteria and expectations for free trade agreements with the USA (TTIP) and Canada (CETA) in our convention resolution of September 2014. The resolution of the Federal Party Congress in December 2015 explicitly confirmed these criteria. They serve as a benchmark for measuring the results of negotiations. Our overall position is quite clear: We say yes to global trade – but only according to progressive rules.

II. Transparency and continued dialogue are essential

The SPD has been continuously involved in the free trade agreement, CETA, at different party levels. Many party groups discussed the issue intensively and controversially and expressed their ideas in numerous motions at SPD conventions and congresses. We summarised these discussions in resolutions which serve as clear guidelines on the expected outcome.

While other parties have avoided serious discussions, the SPD has engaged in an important, open and balanced debate on fair trade policies. Our aim is not to come up with striking slogans or jump to hasty conclusions, but to hold a serious and level-headed discussion based on facts and values and explicitly including objective criticism. We are aware of the criticism which still exists in some sections of society and the trade unions and we take this very seriously.

The new progressive Canadian government led by Prime Minister Trudeau is very much interested in creating a progressive trade agreement. Negotiations between the EU Commission and the Canadian government have already been concluded. However, this explicitly does not apply to political consultations and decisions about CETA. A resolution still has to be passed by the European Council and the agreement still has to be ratified by the European Parliament and then by the national parliaments. We will make sure that there will

be enough time and space for a continued, open and critical dialogue which invites the participation of civil society.

III. CETA: A first evaluation

Canada is one of the oldest and closest partners of the European Union. Canada is an important friend and ally on the North American continent, and has an open-minded approach to European and German interests thanks to its history and national identity. Bilateral relations were already established in the 1950s. Germany and Canada are linked by active cooperation in international bodies, particularly in the areas of security and disarmament, human rights, humanitarian activities and peace-keeping efforts. Also, the EU and Canada work together closely on global challenges such as the environment, climate change, energy security and regional stability.

The Framework Agreement for Commercial and Economic Co-operation signed by the EU and Canada in 1976 was the first formal agreement of this kind between the EU and an industrialised country. Since then relations have been extended and summits and meetings are held regularly at all levels. In the meantime there are 36 bilateral agreements between the EU and Canada and we are associated with Canada by a total of 110 (bilateral and multilateral) agreements.

With regard to CETA we explicitly welcome the fact that Bernd Lange, the social democratic chairperson of the European Parliament's International Trade Committee, presented a synopsis of a detailed analysis of CETA on the basis of criteria formulated in SPD resolutions.

On this basis, and with a view to the conditions laid down in the SPD convention resolution of 20 September 2014 and the resolution adopted to the same effect at the SPD party congress on 8 December 2015, we have obtained the following evaluation of the key points of the agreement:

- **Classification as a mixed agreement:** We have always been of the opinion that CETA should be treated as a mixed agreement. For this reason we expressly welcome the EU Commission's decision – a decision reached, above all, due to pressure exerted by the Social Democratic fraction – to classify CETA as a mixed agreement. This makes it quite clear that not only the European Parliament but also the national parliaments (in the case of Germany both houses – the Bundestag and the Bundesrat) have to discuss and ratify the agreement. Vice versa, this means that if any national parliament rejects CETA, the agreement cannot come into force.
- **Establishment of a public-law investment court:** As far as investment protection is concerned, we have always spoken and acted in favour of abolishing the existing private-law ISDS system. Upon the initiative of the Social Democratic fraction, we have succeeded in making fundamental amendments to the already negotiated text of the agreement on this issue and in establishing a public-law investment court for the first time ever. This means that not only will the former investment protection

provisions between the EU member states and Canada, which are still based on the old ISDS system, be abolished, but that a court offering the opportunity of creating a modern investment protection system in accordance with rule-of-law principles will be established. The EU Commission has declared that this will be the foundation for all EU trade agreements in the future. The old ISDS system is therefore obsolete. This puts CETA at the starting point of a process which would end with the establishment of a global international trade and investment court – an aim which all parties to CETA mutually and expressly acknowledge. As the process continues, unclear legal terms are to be avoided. Apart from this, services of general interest are to be exempted from dispute settlement mechanisms.

- **New rules, greater transparency, improved standards:** This new concept of an investment court provides for more transparent processes, improved standards in the choice of judges, a more precise definition of legal terms and the possibility of rights of appeal. These are important steps in a positive direction. In a further parliamentary process, a detailed examination must be carried out as to whether the hitherto imprecise legal definitions, in particular, have now been formulated precisely enough and whether the independence of judicial decisions is adequately ensured. In our convention resolution we have stated that we reject unclear definitions of these legal terms. We expect the parliaments to subject these issues, which have also been put forward by sections of civil society, to thorough scrutiny and, where appropriate, insist on clarification before ratifying the agreement.
- **Parliamentary sovereignty in decision-making:** With a view to regulatory cooperation in the adaption of regulations and standards, we have expressed the expectation that this must not be allowed to restrict the policy-making options of parliaments and governments. CETA envisages regulatory cooperation on a voluntary basis and with no binding effect on parliamentary decisions. It also emphasises the contracting parties' own "right to regulate", making it clear that the parliaments' sovereignty in making decisions is fully ensured. During the work of the joint committee, it has to be ensured that envisaged control by the joint committee is transparent and is also subject to regular scrutiny, in particular by the parliaments of the contracting parties. In this way it must be ensured that the role of the committee is limited to an implementing and advisory function – as set down in the agreement. Democratic freedom must on no account be compromised, either directly or indirectly.
- **Reduction/elimination of tariffs and increased market access:** CETA provides for the widespread reduction and elimination of trade tariffs and technical trade restrictions. European companies will obtain access to the Canadian markets, especially for the first time to procurement markets at various state levels in Canada.
- **No competition based on dumping:** CETA makes it quite clear that the parties to the agreement reject any competition based on dumping and that trade objectives must not serve to circumvent labour or environmental protection standards. Generally speaking, CETA contains agreements on progressive regulations and standards in many fields in order to protect employment rights, the environment and human health and to ensure a sustainable economy.

- **Protection of people’s rights at work:** Of particular importance for us is the protection of people’s rights at work and adherence to the core labour standards of the International Labour Organisation (ILO). In CETA, the parties to the agreement pledge that they will endeavour to ratify and implement the ILO’s core labour standards. At the time the agreement was concluded, Canada had not yet ratified two of ILO’s eight core labour standards, one of these being ILO Convention 138 on minimum age for admission to employment, and the other being ILO Convention 98 on collective bargaining. However, the new Canadian government has now declared that it will ratify the remaining two ILO standards swiftly. On 9 June 2016, Canada ratified Convention 138. Ratification of ILO Convention 98 is to follow. We expect this to be done in the very near future. On the whole, the new Canadian government under the leadership of Prime Minister Trudeau is defining new priorities, a step which we welcome.
- **Enforcement of social and environmental standards:** In our convention resolution we expressed the expectation that in cases of conflict, labour and social standards would be just as effectively safeguarded as other provisions of the agreement. CETA envisages a dialogue-oriented process in which civil society, including trade unions and the ILO, will participate, in order to ensure the labour, social and environmental standards embedded in the sustainability chapter. In contrast to other parts of the agreement, up to now this process does not envisage any possible sanctions. However, even in the approach hitherto pursued, the parties have pledged to implement recommendations of the “panel of experts”, that still has to be set up. The binding nature of decisions must be ensured and the effectiveness of this process must be reviewed in further consultations. One of the aspects that must be examined is, how – with reference to CETA’s revision clause that has been specially introduced for this purpose – the existing enforcement mechanism can be extended with a view to possible sanctions. The high level of European consumer standards must also be guaranteed. The precautionary principle is set down in the European treaties. In order to make this legal position quite clear, the precautionary principle should be specifically underlined again with reference to CETA. In accordance with valid European law, this principle states that market access for products and foodstuffs can be denied if, on the basis of a preliminary scientific assessment, there are reasonable grounds to fear a potentially dangerous effect for the environment or for the health of humans or animals.
- **Protection of services of general interest:** Protection of services of general interest is a critically important issue for us and this protection must be afforded in full. In CETA, a wide variety of protection rules are formulated for a large number of service sectors, in particular for services of general interest: For example, there is a general protection rule for services of general interest (the so-called “public utilities” exception) as well as additional extensive special protection rules for sectors such as water supply, education, health and social services. Services of general interest are largely protected by the exceptions listed in the so-called Annex II, which are not subject to *ratchet* or *standstill* clauses in particular. Accordingly, re-municipalisation in these sectors is still possible.

Nevertheless, CETA also applies a so-called negative list. This means that there is an obligation to open up markets for all services except those specifically mentioned in the list. In the SPD convention resolution, we expressed the opinion that a positive catalogue would be better and would induce more confidence than negative lists, as has been the paradigm up to now. For this reason, how the negative list and protection rights for services of general interest are formulated must be discussed in detail in order to also prevent possible future developments in those public services of general interest that have not been included in the current negative list, forcing them into privatisation and liberalisation. This is a central issue, which has to be ensured by accompanying clarification in the course of further negotiations.

This analysis of CETA shows that progressive rules have been agreed upon in many fields. Against the background of this progress, it is justifiable for the EU's Council of Ministers, with Germany's approval, to continue paving the way to further parliamentary discussion on CETA, if at the same time the regulations on investment protection are excluded from provisional implementation of such agreement. However, as described above, with regard to certain aspects there are still some unresolved issues and questions which will have to be subjected to further scrutiny in the upcoming consultation and ratification process. Here clarification and additional specifications are necessary, for example in the form of legally binding supplementary statements between the partners to the agreement. These might possibly take the form of recorded declarations or accompanying arrangements between the partners which provide substance to the revision clauses already planned for inclusion into CETA. The European Parliament must make use of all options and throw its political weight into the trade policy arena.

On all accounts, the following issues must be ensured – by clarification, where necessary,

- the independence of judicial decisions at the investment court must be ensured and clear definitions in the material legal standards must rule out dubious demands;
- the 8 core ILO standards must be ratified, social dialogue must be well developed, the procedure for enforcing social and environmental standards must be sufficiently effective and thought must be given to how it can be supplemented by possible sanctions;
- in the service sector, the negative list approach must not lead to uncontrolled liberalisation and whether the planned protection exceptions actually do fully and adequately ensure all areas of services of general interest or whether further additions/amendments are necessary must be examined. Protection of services of general and general economic interest must be watertight and communal bodies must be given adequate scope for action.

We welcome the fact that Canadian Prime Minister, Mr. Trudeau, and Sigmar Gabriel have jointly spoken in favour of supplementing CETA by a legally binding declaration to be made by the partners to the agreement in order to bring about clarification in the important sectors

of protection of investments, protection of people's rights at work, protection of services of general interest and public procurement. Decisive progress can be made by doing this.

We as Social Democrats will do our utmost to ensure that this agreement serves the interests of the people and regulates economic power. In order to achieve this, we expect the unresolved issues and unanswered questions stated here, above all, to be discussed and clarified in the further process. This is the condition and prerequisite for Social Democrats giving their final approval in the German Parliament.

IV. The hour of the parliaments has come – our expectations on the further ratification process

Parliaments are the institutions which represent the interests of Europe's citizens. They alone can provide European trade policy and agreements such as CETA with the necessary democratic legitimation. The existing wording of the agreement is the result of negotiations between representatives of the EU and Canada. We say: now the hour of the parliaments has come. It is the parliaments which must discuss – extensively and in detail – whether CETA fulfils the demands placed on a progressive trade policy.

The German Bundestag will discuss the treaty before it is discussed and put to the vote in the EU Council of Ministers. After consultation and a positive decision by the Council of Ministers, the door is open for further parliamentary action and ratification, first in the European Parliament and then in the national parliaments – in Germany this means both houses – the Bundestag and the Bundesrat. It is the parliaments which determine the process and make the final decision. In doing so, we will act in close coordination with the trade unions.

With this in mind, the SPD has the following clear expectations on further parliamentary consultations and the ratification process:

- We want CETA to be brought before the national parliaments for further consultation. Above all, consultations in the European Parliament and later in the national parliaments must ensure that the agreement undergoes careful scrutiny and that unresolved issues are dealt with. We expect that the European parliament, as the first instance, will discuss the agreement extensively and bring about clarification, where necessary.
- Discussions in parliament must include civil participation. In view of the special significance of CETA, we also advocate an extraordinary joint hearing by representatives of the European Parliament and the national parliaments on the agreement. In addition, the national parliaments should forward statements of opinion to the European Parliament before its final consultations. CETA should set a new benchmark in the parliamentary handling of trade agreements and in the cooperation of the European and national parliaments. This should put out a positive signal in favour of strong European parliamentarianism.

- In the case of EU mixed agreements, due to the length of the ratification process (the parliaments of all EU member states must give their approval) and due to the particular distribution of responsibility for trade policies, those parts of the agreement that do not fall within national competence can be applied provisionally. The time at which a decision is made on such provisional application is a matter of political discretion, and such a decision is independent of when the agreement is signed (Article 218 (5) TFEU “if necessary”). Certain parts of the agreement cannot be applied provisionally until the European Parliament has given its approval. For this reason, the Party Convention is in favour of advocating, in the EU committees and in particular in the European Parliament, that the European Parliament shall implement a detailed consultation process with national parliaments and civil society in order to discuss controversially debated issues and the development of possible solutions before any final decision on provisional application of parts of the agreement is made and that there shall be no provisional application of the agreement until this process has been concluded. On this basis, following ratification by the European Parliament, those parts of the agreement which do not affect national competence can be provisionally applied. We are firmly convinced that Chapter 8 (investments) is one of the issues affecting national competence, which means that no regulations pertaining to this chapter can become valid until a corresponding resolution has been passed in both the Bundestag and the Bundesrat.
- As Social Democrats, we shall emphatically support implementation of the aims formulated in this resolution – at a European level in the European Parliament and the EU Council of Ministers, as well as in the German Bundestag and Bundesrat. We shall already put forward the unresolved issues and the required clarification to the Council of Ministers in order to start the further process of consultation and amendment. Parliamentary consultations, especially in the European Parliament, must then allow space for further amendments.

With reference to the resolutions of SPD Convention of 20th September 2014 and the resolution of the Federal Party Conference of 8th December 2015, the delegates to the Party Convention expect the following points that are included in the process described above to be agreed upon and declared to be legally binding, if possible before a decision is taken by the Council of Ministers and/or in ensuing parliamentary processes, in order to make CETA consensual:

- In the field of investor protection, with a view to specific legal regulations such as ‘fair and just treatment’ and ‘indirect expropriation’ it must be ensured that there shall be no preferential treatment of foreign investors over domestic investors or citizens. Investor protection should thus be restricted to dealing with discrimination of foreign investors in comparison to domestic investors.
- With reference to the Cartagena Protocol and the legal position of the EU in the WTO dispute between the EU and North America over hormone-treated meat, a legally binding and unequivocal statement must be made that in the context of CETA, the EU in no way whatsoever departs from the precautionary principle that is anchored in primary legislation (Art. 191 TFEU).

- As part of the consultation process, a sanctioning mechanism must be developed for violations of the partners against labour, social and environmental standards. The ILO's eight core labour standards must be ratified. The social dialogue is to be effectively developed so that the process for implementing standards is sufficiently efficient and is supplemented by the possibility of sanctions.
- It must be ensured and made clear that all bodies created by CETA initially have a consiliary function to implementing the agreement and can only make limited decisions which have to be consistent with the democratically legitimated procedures of the partners do not violate the sovereignty of the parliaments and governments.
- From the wording of CETA, it must be unmistakably clear that existing public services of general interest and such which may emerge in the future are not governed by the agreement.
- As opposed to WTO processes, in 2015 the community of nations succeeded in passing a resolution on joint sustainability goals and concluding the Paris climate protection agreement. With reference to Art. 24.4 (chapter on trade and environment), the partners to the present agreement shall emphasize that the Paris agreement is of great value and that CETA and the trade and economic policies described therein shall be orientated towards its goals.

As a party, we shall closely follow further consultations and ratification and play an active role in shaping these processes. Social Democrats in the parliaments will approve an agreement that explicitly meets our clearly-defined criteria.