

foodwatch

Report 2022



CETA

AN ATTACK ON HEALTH,
THE ENVIRONMENT, CONSUMER
PROTECTION AND DEMOCRACY

The trade agreement disempowers the European Parliament
and strengthens the influence of corporations.

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CETA – AN ATTACK ON HEALTH, THE ENVIRONMENT, CONSUMER PROTECTION AND DEMOCRACY

The trade agreement disempowers
the European Parliament and strengthens
the influence of corporations





OBAMA & MERKEL
KOMMEN!

**TTIP &
CETA
STOPPEN!**

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PROTEST!

FÜR EINEN GERECHTEN WELTHANDEL!

STOP
TTIP
CETA

Fremdhandelsabkommen EU/USA
Fairer Handel für die bäuerliche Land-
statt Freihandel für Konzern-P...

JESUS RETTET

Hier ist
DIE LINKE

Freigewählte
Trinks
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CETA
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A SUMMARY AND DEMANDS

‘CETA trade agreement’ – it might sound harmless enough and somewhat technical, but this agreement between the EU and Canada represents a considerable danger to democracy, climate protection and the everyday lives of EU citizens. The many hundreds of pages that make up the treaty contain clauses that undermine democratic principles and dilute the rights of parliaments, workers and consumers alike. CETA would create a parallel world – a power structure in which large corporations and bureaucrats would call the shots.

FOODWATCH SEES THREE MAJOR THREATS IN CETA:



CETA UNDERMINES THE RULE OF LAW BY CREATING A PARALLEL JUSTICE SYSTEM FOR CORPORATIONS ALONE.

A special court will be established with CETA, through which international corporations will be able to massively expand their power. Only companies that want to sue a government will be allowed to appear as claimants. Governments and citizens, on the other hand, will not be allowed to appeal to this court. Furthermore, the court’s judgments will be based on highly unclear legal concepts. As far back as 2017, the German Association of Judges demanded that the national parliament should not allow these special courts on this basis.

The Association of Judges referred to bad experiences with the rights of corporations to bring about legal proceedings in other international agreements. Here, companies pursue legal claims before international special tribunals, so-called arbitration courts. These are ad hoc special courts for corporations outside the state legal system. The unclear legal foundations of these special courts are “all the more critical”, given they “already exercise direct power in the states concerned. Because of their status, they are able to overrule the decisions of national administrations and courts in favour of investors”. With CETA, this exercise of power is considerably strengthened, as even the special courts themselves will be “upgraded”. They would become permanent courts through CETA, known as the ‘investment court system’ (ICS), and could make decisions with EU-wide effects.¹

¹ <https://www.bundestag.de/resource/blob/558032/116b824b34dd91f1471aff23b379b7ec/19-9-43-Schneiderhahn-data.pdf> (Last accessed 22.08.2022).

A series of examples demonstrate how harmful the rights of corporations to bring about legal proceedings can be. Several international agreements have already established this type of ad hoc special court, with serious consequences for democracy. For example, utility company Vattenfall sued the German government in a special court in Washington for a pay-out of €4.7 billion. Vattenfall demanded the money in compensation for the phase-out of nuclear energy. After the reactor disaster in Fukushima in 2011, Germany decided to gradually shut down its nuclear power plants by 2022.

Vattenfall was able to turn to the special court because Germany and Sweden had signed up to the so-called 'Energy Charter Treaty'. Crucial parts of the court proceedings were held in secret. For two years, it was even kept secret how many billions Vattenfall was suing for.² Through this legal action, the corporation was able to successfully exert pressure. In the end, the German government agreed to pay Vattenfall €1.4 billion in compensation,³ the biggest sum any company has received for Germany's nuclear phase-out. Only then did Vattenfall drop its legal claims in the special court. The pay-out was also questionable because nuclear power plants were massively subsidised by the state. Among other things, big corporations only pay part of the costs for final storage of nuclear waste.⁴ The taxpayer is responsible for all additional costs and the risks related to final storage sites.⁵ As such, the community is already bearing enormous costs and risks so that utility companies can make even higher profits.

This case is just one of many in which big corporations have asserted their financial interests before these special courts and have received large pay-outs in compensation. When faced with such looming consequences, governments sometimes no longer even dare to bring about laws for the benefit of the general public and the environment. Progressive legislation is being prevented by this deterrent effect – to the detriment of democracy, the public interest and citizens. Special courts for big corporations are not necessary. In both the EU and its member states and in Canada, corporations can use existing state legal systems. CETA's parallel legal system for big corporations is not needed.

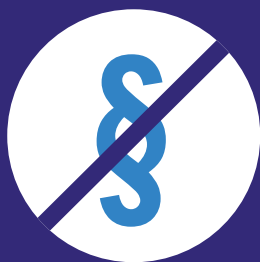
As soon as CETA has been fully ratified, the rights of corporations to bring about legal proceedings within these special court systems will also come into force within the framework of the agreement. This, alone, is a valid reason why the parliaments of EU member states that have not already voted on CETA should reject its ratification.

² <https://www.bundestag.de/resource/blob/558032/116b824b34dd91f1471aff23b379b7ec/19-9-43-Schneiderhahn-data.pdf> (Last accessed 22.08.2022).

³ <https://www.spiegel.de/wirtschaft/unternehmen/vattenfall-verklagt-deutschland-wegen-atomausstieg-auf-4-7-milliarden-a-997323.html> (Last accessed 22.08.2022).

⁴ <https://www.boerse.de/nachrichten/Akw-Prozess-von-Vattenfall-gegen-Deutschland-nun-offiziell-beendet/32868632> (Last accessed 22.08.2022).

⁵ <https://www.n-tv.de/wirtschaft/Kabinett-erlaesst-Atom-Konzernen-Haftung-article18888341.html> (Last accessed 22.08.2022).



CETA OVERRIDES BASIC DEMOCRATIC PRINCIPLES. THE AGREEMENT WEAKENS THE SEPARATION OF POWERS.

CETA creates committees that meet in secret and are given extensive powers, but are not controlled by parliaments. CETA committees are staffed by bureaucrats from the EU and Canada. The public has no insight into what exactly is being discussed on these committees, yet they can prepare decisions that have an enormous impact on the everyday lives of citizens. They deal with topics such as food safety, genetically modified crops, climate protection and the toxicity of pesticides. The elected representatives of the people are also excluded. Neither national parliaments nor the European Parliament are involved in the decisions of CETA committees. And this secrecy prevents any kind of discussion about planned decisions. As such, CETA undermines the fundamental principles of democracy and weakens the separation of powers.

Democracies can only function when no one institution becomes overpowering. In particular, the power of governments must be limited so that they cannot act in a dictatorial manner. In German, we talk about the ‘separation of powers’, while in English we speak of ‘checks and balances’. Balances meaning there’s a counterbalance to the government’s power. It cannot make important decisions alone, requiring a majority in parliament. Checks meaning government actions are scrutinised by parliament. Transparency is also important for democracy: various societal interests are only reflected in the legislative process when there is public and political debate.

The CETA agreement undermines all of these principles. CETA committees are staffed by bureaucrats from the European Commission and the Canadian government. As such, they are part of governmental power

(the executive). They can make far-reaching decisions. Only the Council of the European Union can influence these decisions, which itself is staffed by ministers from EU member states and therefore by representatives of governments (executives). National parliaments and the European Parliament (the legislature) are left out. The elected representatives of the people are therefore disempowered, and not even informed about planned decisions: committee discussions on issues of fundamental importance take place behind closed doors, whereas, in a democracy, it should precisely be the role of a parliament to discuss and make decisions on these fundamental issues. The decisions of CETA committees cannot be reversed by national parliaments or the European Parliament at a later date.

CETA committees have been holding secret meetings since 2018, despite the fact the CETA agreement has not even been ratified by all EU states. Despite this lack of ratification, it is already being applied provisionally.

What is particularly problematic is that, after ratification, CETA committees can make changes to CETA itself. That means parliaments will be signing quasi blank cheques. They are meant to be ratifying a trade agreement, the content of which is not even entirely certain. But CETA committees, which meet in secret, also decide on these changes. In their meetings, they not only discuss the implementation of the trade agreement, but can also subsequently change the protocols and annexes of CETA. This way of working is glossed over as a 'living agreement'. Since CETA committee meetings are held in secret, public debate on sometimes far-reaching decisions is prevented and democratic control is made impossible.



CETA UNDERMINES EUROPEAN CONSUMER AND ENVIRONMENTAL PROTECTIONS.

Until now, the precautionary principle has applied throughout the EU. For example, if there are indications that a pesticide may be harmful to health or the environment, the authorities can preventively ban it. The burden of proof lies with the manufacturer. They must prove the pesticide does not pose a significant risk to health or the environment. Only then can the product be approved for the market.⁶ CETA puts this principle in danger, because the Canadian government wants Europe to move away from the precautionary principle and recognise Canada's rules as equivalent. Europe has failed to ensure that the European precautionary principle is explicitly mentioned and recognised in the text of the CETA treaty. Instead, CETA refers to WTO rules.⁷

In Canada, by contrast, a risk-based approach applies, known as the aftercare principle. There, chemical substances – e.g. pesticides – are only banned if the hazardous nature of a substance has been clearly scientifically proven. Generally, there will already be claims of damage and it is also very difficult to take products off the market once they have been approved. The onus is therefore on the authorities if, for example, they want to ban a pesticide that is suspected of damaging human genomes. In the USA, the aftercare principle has meant that not even carcinogenic asbestos could be completely taken off the market.

Canada takes a position in favour of the agricultural industry, which has repeatedly called for more lax rules on pesticides. Canada exported over two billion euros worth of agricultural products to the EU in 2017⁸ and wants that number to grow. Until now, the EU has been able to apply its own rules to these exports, for example, when checking Canadian rapeseed oil for pesticide residue. The Committee on Sanitary and Phytosanitary Measures (SPS) could undermine these EU import rules: it could decide that Canadian

⁶ The EU system for pesticide approval has some weaknesses in its implementation but is still far more stringent than Canada's approvals process.

⁷ https://www.foodwatch.org/fileadmin/foodwatch_international/reports/2016-06-21_foodwatch-study_precautionary-principle.pdf (Last accessed 22.08.2022).

⁸ <https://cafta.org/agri-food-exports/canadas-agri-food-exports-2014/> (Last accessed 22.08.2022).

rules should be recognised as equivalent. This means food imports from Canada would no longer have to meet European standards on pesticide residue, only Canadian ones. CETA committee decisions could therefore recognise de facto rules as equivalent that are not actually equivalent, meaning, in future, toxic pesticides that have been banned here until now could end up on our plates in Europe. CETA committee decisions therefore have a direct impact on the quality of the food eaten by the 447 million citizens of the EU.

If different rules were to be recognised as equivalent, this would lead to unfair competition. Canadian companies can manufacture their products for less money because they operate to lower standards, such as those that govern pesticide residue or genetically modified organisms (GMOs). European companies that produce goods to higher EU standards would find themselves in competition with Canadian suppliers. This would lead to two things. Firstly, it would put European manufacturers at risk because they would be at a competitive disadvantage. Secondly, it would create ongoing pressure to lower European standards to Canadian levels.

Representatives of civil society have been criticising the CETA agreement for many years now. Organisations in Europe and Canada have repeatedly warned of the effects.

CETA can still be stopped, because the trade agreement has not yet been ratified by all EU states. If an EU member state ultimately refuses to ratify it, the EU must end its provisional application.

As outlined above, CETA is already highly problematic in its provisional application alone. After ratification, the controversial special courts system (ICS) would also come into force.

FOODWATCH DEMANDS

International trade needs rules to ensure democracy, human rights and planetary boundaries are respected. Trade must not endanger or hinder the improvement of climate and environmental standards or the rights of citizens, workers and consumers worldwide.

‘New-generation trade agreements’ like CETA do not meet these criteria. While old trade agreements focussed on removing tariff trade barriers, new-generation agreements are primarily about reducing or even eliminating ‘non-tariff’ barriers altogether. Rules that protect human rights, the environment, health and consumers are also seen as ‘non-tariff barriers’.

foodwatch rejects CETA and calls for a complete renegotiation of the agreement:

CETA undermines the rule of law by creating a parallel justice system for corporations alone. This means private companies can sue governments when new laws go against their private interests.

CETA overrides basic democratic principles. CETA committees make far-reaching decisions without transparency and without democratic accountability.

CETA undermines the protection of EU citizens, the climate and the environment. It is a threat to Europe’s precautionary principle, as Canada urges the EU to accept a risk-based approach/aftercare principle.

CETA CAN STILL BE STOPPED. IT HAS NOT YET BEEN RATIFIED BY ALL EU MEMBER STATES.

1 We call on the European Commission and the governments of all EU member states to suspend CETA's provisional application and negotiate a new agreement with Canada in line with the above demands.

2 We call on national parliaments not to ratify CETA. By ratifying it, parliaments are giving the European Commission and non-transparent and unaccountable committees a blank cheque to expand and change the existing CETA agreement without any parliamentary control.

3 We call on the governments of EU member states that have not yet ratified CETA to submit a notice of non-ratification to the European Commission and withdraw from CETA when their parliament votes against it.

A VOTE AGAINST CETA IS A VOTE FOR DEMOCRACY.

B THE THREE MOST IMPORTANT POINTS OF CRITICISM IN DETAIL



CETA UNDERMINES THE RULE OF LAW BY CREATING A PARALLEL JUSTICE SYSTEM FOR CORPORATIONS ALONE.

If CETA is fully ratified by all member states, the rights of corporations to bring about legal proceedings will come into force. Companies could then start claiming billions in damages from individual governments. Companies based in Canada and Europe – including subsidiaries of companies from other countries which are based in Canada and Europe – would be entitled to sue. They would be able to take their case to the special courts if they thought they were being disadvantaged by a new law in the destination country of their exports. This would allow them to sue for compensation for (potential future) lost profits. Corporations would bypass the due legal process and proceed directly to a special court, through which they could put pressure on European governments. Experiences with the investment protection special courts demonstrate that the rights of corporations to bring about legal proceedings are often used to attack the rules put in place to improve climate, environmental and consumer protections.

Previous investment protection and trade agreements have shown how serious the consequences of these types of legal proceedings can be. One example is the 'NAFTA' trade agreement. US company Cargill took legal action against Mexico in a special court in 2005 after the country levied a tax on drinks containing unhealthy levels of high-fructose corn syrup. Cargill sued Mexico for US\$120 million. The company did not actually produce any high-fructose corn syrup in Mexico itself, only imported it. Nevertheless, legal action was possible due to the lax definition of 'investment' in the NAFTA trade agreement. In the end, Mexico had to pay Cargill US\$77 million.⁹ (Another case study 'Ethyl Corporation' can be found on page 15)

With the planned 'investment court system' (ICS), CETA would also create a special courts system that would operate outside of national and European law.

⁹ See <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/204/cargill-v-mexico> (Last accessed 22.08.2022).

CETA creates a parallel justice system for corporations



Graphic: foodwatch.org

Furthermore, this special court would make decisions on the basis of highly flexible legal concepts. As far back as 2017, the German Association of Judges called on the country's national parliament to refuse to give the European Commission the mandate to set up this kind of court system.¹⁰ They also warned that the planned structure of the investment court system could lead to a 'complaints industry'.

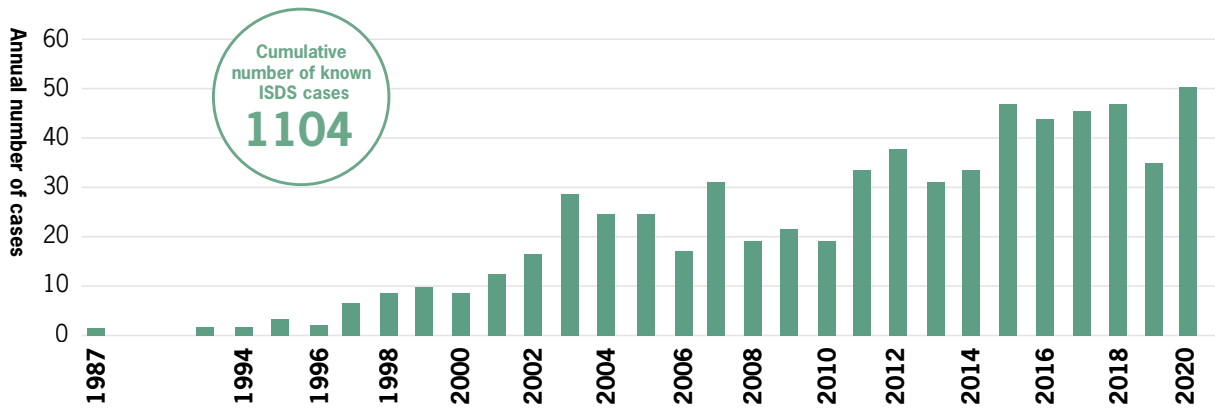
The German Association of Judges refers to experiences with other trade agreements and investment protection agreements. The decisions of the special courts in previous agreements were not based on clearly formulated laws, but rather on contractual clauses that were often very vague and broad. This also applies in the case of CETA. The judges concluded that "creating a multinational court that can make up its own applicable law is the wrong way to go".

¹⁰ <https://www.drj.de/positionen/stellungnahmen/stellungnahme/news/2117/> (Last accessed 22.08.2022).

There has already been a series of negative experiences with the rights of corporations to bring about legal proceedings in other trade and investment protection agreements. As of the end of 2020¹¹, there were over a thousand known cases of corporations exercising their right to bring about legal proceedings; 72 of them alone were raised in 2020 and 68 in 2021.¹² Companies pursue their legal claims before international special tribunals, so-called arbitration courts. These are special courts for corporations outside the state’s legal system.

Furthermore, only foreign companies can bring about legal proceedings in a special court. Domestic companies do not have this option. And when states lose cases, the taxpayer picks up the bill. Special courts are having an effect even though they are not yet active. In the past, governments have withdrawn or watered-down draft legislation out of fear of legal proceedings. Regulations designed to protect the environment and consumers are being prevented from the outset (See also the case 'Ethyl Corporation' on page 15).

Trends in known treaty-based ISDS cases, 1987–2020



Graphic: foodwatch.org
 Source: UNCTAD, Investor–State Dispute Settlement Cases: Facts and Figures 2020

¹¹ See Investor–State Dispute Settlement Cases: Facts and Figures 2020 | Publications | UNCTAD Investment Policy Hub (Last accessed 22.08.2022).

¹² See UNCTAD website: <https://investmentpolicy.unctad.org/investment-dispute-settlement> (Last accessed 22.08.2022).

THE CASE OF 'ETHYL CORPORATION VS CANADA': CORPORATIONS INTIMIDATING GOVERNMENTS

This case illustrates how corporations can use special rights to bring about legal proceedings to block laws that go against their profit interests:

Ethyl, a US chemical company, launched a NAFTA investor-state dispute settlement against Canada in 1997. The Canadian Parliament wanted to ban MMT¹³, a fuel additive, designed to improve engine performance. Even the automotive industry had expressed concerns about MMT. The substance could damage a car's catalytic converter. Furthermore, MMT is highly toxic to humans and animals. The substance enters the body directly, for example, through contact with the skin or when petrol vapours are inhaled. In animals, MMT has been observed to cause severe damage to the lungs, liver and kidneys. When MMT is burned in an engine, various manganese compounds are formed, which are also toxic.¹⁴

Ethyl began legal proceedings to challenge the ban because of the special rights established by the NAFTA treaty. The company claimed the ban was an 'indirect expropriation' of its assets, in part, because it would damage the company's reputation. The company demanded US\$251 million in damages. Canada argued that NAFTA did not allow Ethyl to bring about legal proceedings. However, a NAFTA tribunal rejected their objection. Shortly after, the Canadian government announced it had come

to an agreement with Ethyl. Canada committed to dropping the proposed MMT ban. Furthermore, the Canadian government had to pay Ethyl US\$13 million in 'damages', along with their legal fees. Furthermore, the government committed to running advertisements claiming that MMT is safe. To date, Canada has largely relied on voluntary restrictions to reduce MMT levels in petrol.¹⁵

The Ethyl case shows how special rights to bring about legal proceedings weaken democracy. Canada simply wanted to respond to concerns from the automotive industry while protecting consumers from a toxic substance. Through their right to bring about legal proceedings, the chemical company was able to intimidate elected representatives of the people and the government. Ethyl was able to force Canada to make far-reaching 'compensations': on the one hand, paying out millions and, on the other hand, the Canadian government had to act as a kind of advertising agency for the corporation by officially announcing that MMT was harmless. Special rights to bring about legal proceedings are an instrument of power through which corporations bring governments into line, often ahead of time. Discussions and plans are being thwarted from the outset as parliaments and governments fear they will have to pay out millions or even billions in 'compensation'.

¹³ <https://www.monbiot.com/1998/08/13/running-on-mmt/> (Last accessed 22.08.2022).

¹⁴ https://web.archive.org/web/20160303221216/https://www.nicnas.gov.au/__data/assets/pdf_file/0020/4385/PEC_24_Methylcyclopentadienyl-Manganese-Tricarbonyl-MMT_Full_Report_PDF.pdf (Last accessed 22.08.2022).

¹⁵ For more information on the Ethyl case, see <https://www.isds.bilaterals.org/IMG/pdf/ethyl.pdf> (Last accessed 22.08.2022).

Corporations can raise claims for damages for even the potential of lost profits in the special courts. When faced with such looming consequences, this can mean governments no longer even dare to bring about laws for the benefit of the general public and the environment. This deterrent effect prevents progressive legislation – to the detriment of democracy, the public interest and citizens. Corporations do not need these special courts. In Canada, the EU and individual EU member states, there are state legal systems these corporations can use. A parallel justice system is not necessary.

The EU has promised to reform the rights of corporations to bring about legal proceedings in the CETA trade agreement. Instead of ad hoc special courts, a permanent ‘Investment Court System’ (ICS) would be created. Once fully ratified, CETA would be the first agreement with this type of system. But the illustrious-sounding name is deceptive. Many fundamental problems surrounding the rights of corporations to bring about legal proceedings remain: the rights of corporations to bring about legal proceedings are still far-reaching and based on unclear legal concepts. And the ‘reformed’ special courts system would be created specifically for corporations and could only be used by them for legal proceedings.

SPECIAL RIGHTS TO BRING ABOUT LEGAL PROCEEDINGS UNDERMINE PUBLIC INTEREST

Foreign investors in CETA continue to be awarded far-reaching rights and, at the same time, have no binding obligations to uphold (e.g. in terms of climate, environmental or consumer protections). This exclusive means of legal action is only open to them. Trade unions, people affected by human rights violations, domestic investors and governments have no access. The CETA trade agreement also fails to set out any clear limits on compensation amounts. In the past, this has led to states having to pay very high compensation sums to companies in some cases because future lost profits were also included.

There have also been no areas of public interest clearly excluded from corporate legal proceedings, such as climate protection. In Canada, companies that export fossil fuels to the EU, in particular, benefited from CETA in 2017 and 2018.¹⁶ This included particularly environmentally- and climate-damaging tar sands oils. Climate protection is seen in the CETA trade agreement as an impediment to free world trade; sustainability and climate protection do not play a major role in the agreement. In future, companies will be able to use CETA to sue states that have implemented climate protection measures. Investments in climate-damaging fossil fuels will be protected by the right to bring about legal proceedings.

¹⁶ <https://thomas-fritz.org/default/ceta-dreckiger-freihandel> (Last accessed 22.08.2022).

This means CETA prevents the precise change of course now urgently needed for climate protection: instead of more investment in fossil fuels, investments in wind, solar and geothermal energies are needed. Furthermore, it is vital climate-damaging investments of the past are corrected. CETA, on the other hand, even encourages corporations to invest in big new climate-damaging projects and thus committing themselves to climate-damaging fuels for decades to come. Corporations have been making these kinds of decisions for years in the full knowledge they are relying on outdated technology and massively accelerating the warming of the planet. If corporations are to be compensated for climate-damaging investments with the help of these special courts, that would constitute a reward for continuing to develop into the wrong direction.

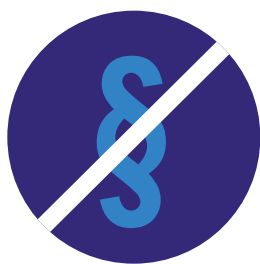
What supports the fears of the judges' association is, that the ratification of CETA could start a wave of legal proceedings: Even third-country companies with subsidiaries in Canada and Europe could pursue corporate legal proceedings under CETA.

As an interesting side note, in the United States-Mexico-Canada Agreement (USMCA), the successor agreement to NAFTA, Canada and the USA have excluded the rights of corporations to bring about legal proceedings between their two states.¹⁷ The fact Canada and the USA no longer want the rights of corporations to bring about legal proceedings to be anchored in USMCA speaks for itself.

CONCLUSION:

CETA undermines the rule of law by creating an unnecessary parallel justice system for corporations alone. This means private companies can sue governments when new laws go against their future profit interests. This creates a deterrent effect that prevents progressive legislation. The introduction of the special courts system alone is a valid reason why CETA should not be ratified.

¹⁷ See Lori Wallach, "The US drops ISDS", in The Globalist, 24.01.2020. Download from: <https://www.theglobalist.com/united-states-european-union-trade-isds-usmca-uncitral-mic/> (Last accessed 22.08.2022).



CETA OVERRIDES BASIC DEMOCRATIC PRINCIPLES. THE AGREEMENT WEAKENS THE SEPARATION OF POWERS.

It is not only the special courts that are a threat to democracy, but also the committees established by the CETA agreement. They make decisions in secret sessions that are binding under international law. They make decisions without any parliamentary control. A committee is assigned to almost every chapter of the agreement (e.g. agriculture, goods trading, investments). The committees are made up of representatives of the parties to the agreement. These are usually administrative officials from Canada and the European Commission.

The European Parliament and 16 national parliaments have voted in favour of the CETA ratification. In 11 countries the vote in the national parliament still needs to happen.¹⁸ Once ratified, however, the parliaments can no longer influence the decisions of CETA committees. In particular, the European Parliament is disempowered by CETA, as decisions on the implementation of CETA can be made without the involvement of democratically-elected parliamentarians.

But not only that. Some CETA committees, particularly the Joint Committee, can independently amend CETA protocols and annexes. Some annexes were even left blank to be “agreed at a later stage”.¹⁹

Canada and the European Union are therefore signing up to a trade agreement, some of the annexes to which still contain blank spaces, and authorising CETA committees to fill in the gaps later. This is euphemistically referred to as a ‘living agreement’. However, in reality, this means parliaments are disempowering themselves by issuing blank cheques to highly problematic panels: CETA committees belong to the executive branch, are staffed by bureaucrats and work in a non-transparent and secret way, meaning no public debate or control is possible. The elected representatives of the people have no influence over the decisions of CETA committees. This is a serious democratic deficit.

Only the Council of the European Union, which is also made up of government representatives, has any influence over the votes of CETA committees. It establishes the EU position that the Commission must represent in the committee. The Council acts unanimously regarding this so-called position. De facto, every member state has therefore a right to a veto.

¹⁸ <https://www.consilium.europa.eu/en/documents-publications/treaties-agreements/agreement/?id=2016017> (Last accessed 22.08.2022).

¹⁹ See e.g. Annex 5-E, Section B · <https://data.consilium.europa.eu/doc/document/ST-10973-2016-ADD-3/en/pdf#page=28, page 52>. (Last accessed 22.08.2022).

How CETA committees weaken democracy



Graphic: foodwatch.org

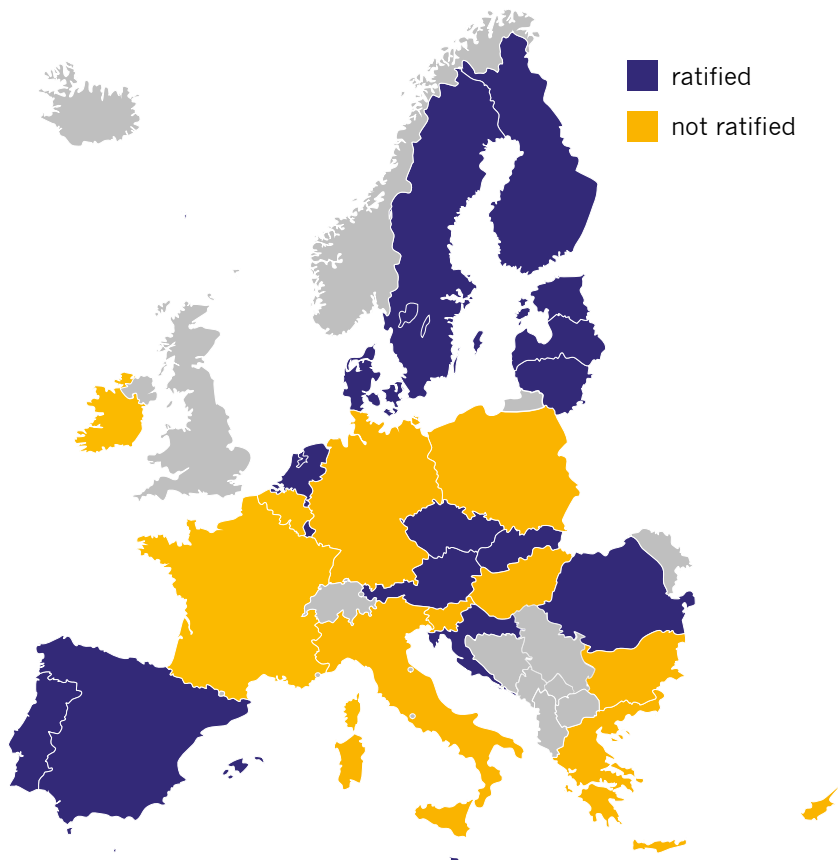
Once decisions have been taken by the committees, the European Parliament is merely informed, but has no voting rights itself. Since the decisions of CETA committees are binding under international law and can therefore only be altered with the consent of all parties, the exclusion of the Parliament is particularly serious, since no unilateral changes are possible afterwards.

The EU could remedy this democratic deficit on its own and without Canada's consent. The Commission or the Council could involve the European Parliament at an earlier stage, i.e. always present it with draft committee decisions, give it time to adopt a resolution and set out its position, and then take this into account. Article 218(9) TFEU does not prohibit this.

CETA therefore means: “governing by committee”, as mandated by the executive, rather than governing by elected representatives of the legislature.²⁰ This undermines the accountability of leaders, a key pillar of democracy. It is difficult to make out to whom which powers belong. It should be clear to voters who is responsible for which decisions.

If CETA is ratified, citizens and communities would often have no opportunity to fight back against decisions made by CETA committees. In terms of these decisions, the European Parliament and national parliaments would be disempowered and democratic controls would be ceded.

Furthermore, once CETA has been fully ratified, it would be practically impossible to stop it. It is unclear whether and how individual EU member states can terminate the CETA trade agreement or what the legal consequences would be. The EU itself can terminate CETA, but this requires a Council decision with the participation of all EU member states. And even after being terminated, the special rights of companies to bring about legal proceedings would remain in effect for 20 years.



Graphic: foodwatch.org
Source: <https://www.consilium.europa.eu/en/documents-publications/treaties-agreements/agreement/?id=2016017>, last accessed 05.08.2022

²⁰ <https://www.heise.de/tp/features/Demokratie-vs-Freihandel-6667143.html> (Last accessed 22.08.2022).

LACK OF TRANSPARENCY TOWARDS CITIZENS AND PARLIAMENTARIANS

foodwatch and PowerShift have been trying to gain an insight into the negotiations of CETA committees since early 2020. To date, this has not been successful, despite several official freedom of information requests and two complaints made to the European Ombudsman. At the same time, the EU claims the work of the committees is transparent. The publication of documents from committee meetings on the Commission's website meets "the highest standards of transparency in the implementation of FTAs, in the EU and beyond", as the Commission said in a written reply to foodwatch.²¹

In foodwatch's opinion, highest standards of transparency should look differently. Ultimately, our freedom of information requests compelled the EU to make more than 200 documents on CETA committees available. Often, however, only parts of the documents were made available to us. Sometimes, this took months. Furthermore, parts of the documents were redacted. From foodwatch's point of view, it is scandalous how much time and energy it took to get even superficial information out of the EU on CETA committee meetings. This information is not sufficient to assess the negotiations between Canada and the EU to date. And, apparently, even members of the European Parliament do not have a closer insight into the work of the CETA committees. This also means it is not possible to check to what extent lobby groups are influencing the discussions of CETA committees. The moment lobbyists are able to exert influence behind closed doors, their power increases considerably.

The European Commission has repeatedly promised to increase transparency in European trade policy.²² It has not kept to its promise. In fact, it is not publishing pivotal information from CETA committees.²³ With few exceptions, there are no detailed minutes of committee minutes. One of the first decisions taken by the CETA Joint Committee was on their rules of procedure, which clearly provide for the creation of detailed minutes.²⁴ The parties to the agreement are therefore violating their own decision.

²¹ Annex_1_-_correspondence_with_Europ.Commission.pdf (foodwatch.org), full quote: "This level of transparency meets the highest standards of transparency in the implementation of FTAs, in the EU and beyond." (Last accessed 22.08.2022).

²² See, for example: 'Trade for All' communication, pages 18 and 19: Trade for All - Towards a more responsible trade and investment policy (europa.eu) (Last accessed 22.08.2022).

²³ See the EU Commission website: <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/205dba99-7521-44fc-82bb-789155c58138> (Last accessed 22.08.2022).

²⁴ See the Joint Committee's 2018 'Rules of Procedure, Rule 9': Rules of procedure of the CETA Joint Committee: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/2018-10-rules-procedure-regles.aspx?lang=eng> (Last accessed 22.08.2022).

The European Commission keeps crucial information secret from its own citizens, and even parliamentarians. foodwatch received only a very poor response from the European Commission to a written query: the Joint Committee had decided to abolish minute-taking.²⁵ However, detailed minutes that outline the exact course of the conversation and, above all, record plans, resolutions and objectives, are indispensable in being able to follow the work of committees. Negotiations are a black box: it is unclear who is making which demands.

CETA COMMITTEES ARE A BLACK BOX

In terms of transparency, the EU lags behind Canada in some ways. Canada has provided both internal and external email chains, as well as internal briefings, in response to freedom of information requests (albeit redacted in large parts). The European Commission has only approved the release of internal briefings in exceptional circumstances²⁶ and practically no internal correspondence whatsoever. According to Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (hereinafter referred to as the Freedom of Information Act²⁷), the European Commission is obliged to release all documents, including emails.

Before every CETA committee meeting, there must also be preparatory communications. However, the documents from these preparations have only been made available to foodwatch for a small number of meetings. This means either the European Commission is suppressing documents, thereby violating the Freedom of Information Act, or it is deliberately only making verbal agreements so as not to leave any paper trail. Both would be scandalous.

Detailed information on preparatory meetings or input from industry representatives in the lead up to CETA committee meetings cannot be found on the Commission's website, nor was it made available to foodwatch following freedom of information requests, even though foodwatch explicitly asked for preparatory documents.

All of this material would be vital in holding a public debate on the issues being negotiated. Transparency is imperative for democratic debate and participation. The European Commission is denying its citizens and non-governmental organisations these basic democratic rights.

²⁵ From an email exchange with the DG of Trade on 20.11.2020: "As regards your question about the reporting practice, for reasons of transparency it was agreed that after the first meeting of the CETA Joint Committee only one single joint report per committee meeting would be produced and made public. This practice has been followed since then by both the EU and Canada".Email_DG_Trade_aus_Annex_1_-_correspondence_with_Europ.Commission.pdf (foodwatch.org) (Last accessed: 24.08.22).

²⁶ Five were released in response to our freedom of information requests.

²⁷ Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

EVEN PARLIAMENTARIANS ARE BEING KEPT IN THE DARK

Elected representatives in the European Parliament are also being insufficiently informed about the implementation of CETA through committees. They only have access to the same superficial information available to the general public. Although, in theory, they can request additional documents, they are not allowed to pass on or discuss the content. There is a reading room where members of parliament can look at documents. However, they are not allowed to copy documents or even take notes when reading them.²⁸ This approach makes democratic participation impossible. Elected, legitimate members of parliament can no longer effectively control the actions of the executive. The European Commission is therefore undermining the system of checks and balances.

LACK OF TRANSPARENCY ON CETA COMMITTEES

Only the dates of meetings, the planned agenda and summaries of meetings are published.

RELEVANT INFORMATION IS NOT BEING PUBLISHED, WHICH WOULD INCLUDE:

- All preparatory documents, presentations, etc.
- Relevant lobbying meetings
- Detailed minutes of meetings (with positions, goals, decisions, next steps)
- The wording of contributions to discussions during committee meetings
- Lists of participants in meetings
- An overview and information about which resolutions are being prepared

²⁸ Information from November 2020.

GENETIC ENGINEERING EXAMPLE: ROLLING OUT THE RED CARPET FOR THE INDUSTRY LOBBY

Almost half of all genetically modified crops grown worldwide are grown in the US and Canada. Canada cultivates the fourth largest area of genetically modified crops in the world after the US, Brazil and Argentina. According to the industry-affiliated organisation ISAAA, Canada farmed a total of 12.7 million hectares in this way in 2018 (mainly rapeseed, soybeans and corn).²⁹

CETA also contains articles on the approval of genetically modified organisms (GMO), and GMO trading. Canada is already using CETA committees to advance the interests of genetic engineering companies behind the scenes. The Canadian government is putting pressure on the EU through CETA committees to relax its rules on GMOs.

²⁹ <https://www.isaaa.org/resources/publications/briefs/54/executivesummary/default.asp>
(Last accessed 22.08.2022).



Countries that planted biotech crops in 2018 (in millions of hectares)



Graphic: foodwatch.org
Source: ISAAA 2018

GMOs are living organisms that have been modified through genetic engineering. In the EU, there are strict rules on the risk assessment, approval, cultivation and use of genetically modified crops, animals and microorganisms, as the release of GMOs into the wild can have far-reaching consequences, such as uncontrolled outcrossing with wild crops when GMO seeds are used in agriculture.³⁰

GMOs can only be released in the EU for a limited period of time. Seeds and foodstuffs containing GMOs are subject to mandatory labelling. And it is illegal to grow or sell GMOs in the EU without permission.³¹ Unapproved GMOs may not be imported into the EU, not even in small traces. They must be withdrawn from the market if discovered. This is the so-called zero tolerance rule. However, due to pressure from the genetics industry, the EU has already softened its zero tolerance policy on animal feed. It has defined a “technical zero” level of 0.1% for animal feed.³² Apparently, these minimum threshold values are “technically hardly avoidable”.³³

³⁰ https://www.testbiotech.org/sites/default/files/Gentechnik_gefaehrdet_unsere_Lebensgrundlagen.pdf (Last accessed 22.08.2022).

³¹ https://ec.europa.eu/food/plants/genetically-modified-organisms/gmo-legislation_en (Last accessed 22.08.2022).

³² https://ec.europa.eu/food/plants/genetically-modified-organisms/post-authorisation/technical-zero_en (Last accessed 22.08.2022).

³³ See Arbeitsgemeinschaft bäuerliche Landwirtschaft [Working Group on Rural Agriculture]: CETA – Attempts to further globalise agriculture, destroy rural markets and make genetic engineering presentable – An analysis of the CETA agreement using examples of market access, geographic indications of origin and genetic engineering. Berlin/Hamm, August 2016. Page 5f.

CETA risks undermining strict EU rules on GMOs. The Canadian government is lobbying globally to allow contamination via unauthorised GMOs and launched the ‘Global Low Level Presence Initiative’ in 2012. In 2003, Canada even filed a WTO complaint against the European GMO ban.³⁴ And the Canadian government is also using CETA to exert pressure on the EU. Their goal is for the EU to abandon its precautionary principle on genetically modified organisms (GMO) and rely on a risk-based approach instead.³⁵ Canada is ignoring legitimate criticisms of GMOs and calling on the European Commission to do the same.

*“Canada urges the Commission to adopt a pragmatic approach to compliance, in recognition that many products of gene editing are not distinguishable from their conventional counterparts”.*³⁶

As such, the Canadian government is clearly representing the interests of genetic engineering companies. They even went as far as to invite industry representatives to a ‘Dialogue on Biotech Market Access Issues’ Committee meeting and asked for input they could exclusively bring to the European Commission:

*“In addition, we invite you to provide us with a description of any GM events for which you would like us to request a status update from the Commission. The GM events that we receive will be consolidated and a list will be provided to the EU in advance of the Dialogue. If there are GM events that are considered a priority, please identify these together with a rationale as to why they are a priority so that we can convey this to the European Commission. A description of the benefits to farmers/industry/crops would be most helpful”.*³⁷

Canada represents the interests of the agricultural industry in a remarkably demanding tone towards the EU. The Canadian government criticises the EU’s legal approvals procedures as being too lengthy and calls for the EU to take a “pragmatic approach” to the approval of GMOs in order to avoid

³⁴ https://ec.europa.eu/food/plants/genetically-modified-organisms/post-authorisation/technical-zero_en (abgerufen am 05.08.2022).

³⁵ For example, this is how the Canadian government was positioning itself at a CETA meeting on biotechnology market access in 2020: “Canada believes that regulatory approaches necessary to ensure the safety of products derived from NBTs [New Breeding Techniques. This term is often used by the genetic engineering lobby to distract from the fact that genetic engineering methods are involved. It means genetic engineering, such as CRISPR-Cas], such as genome editing, need to be science- and risk-based, transparent, predictable, timely, and consistent with relevant international trade obligations” – see 12th Canada-EU Biotech Market Access Issues Dialogue 21 October 2020: Internal Briefing Canada, page 44. Download under: https://www.foodwatch.org/fileadmin/-INT/free-trade-agreements/documents/CETA_report_2022/A-2020-00090_Interim_Release.pdf (Last accessed 22.08.2022).

³⁶ See 12th Canada-EU Biotech Market Access Issues Dialogue, 21 October 2020: Internal Briefing Canada, Page 44. Download from: https://www.foodwatch.org/fileadmin/-INT/free-trade-agreements/documents/CETA_report_2022/A-2020-00090_Interim_Release.pdf (Last accessed 24.08.2022).

³⁷ An email from the Canadian government to Canadian industry representatives as part of the 12th annual CAN-EU Biotech Dialogue Industry Consultation, 23.09.2020. Page 238. Download from: https://www.foodwatch.org/fileadmin/-INT/free-trade-agreements/documents/CETA_report_2022/A-2020-00090_Interim_Release.pdf (Last accessed 24.08.2022).

“unnecessary disruptions to trade”. All of these supposed criticisms are aimed at undermining the EU’s genetic engineering laws and lowering standards on risk assessments and GMO approval. The documents available to foodwatch do not show that the EU has defended its approach to Canada or criticised the Canadian approvals process.³⁸

The Canadian government, on the other hand, uses CETA to vehemently represent the interests of the genetic engineering industry. Before the CETA Biotech Dialogue, Canada even interfered in the work of the European Food Safety Authority (EFSA):

“We have heard that the EFSA process is getting slower, despite recent initiatives to improve efficiency. As the majority of the world becomes more experiences [sic] in biotechnology product assessments, we expect the process to take less time. As you know, we are concerned that these delays could impede trade between Canada and the EU.”³⁹

As such, CETA committees, which meet in secret, are promoting the interests of the Canadian and European genetic engineering and agricultural industry lobbies. The red carpet has been rolled out for them. They alone can bring their interests to discussions, while citizens and elected parliamentarians are left out.

CONCLUSION:

CETA overrides basic democratic principles. CETA committees make far-reaching decisions that are binding under international law without transparency and without democratic accountability. Parliaments are disempowered. The industry lobby can place its issues prominently on the table, while citizens are left in the dark.

³⁸ See European Commission, Joint Report: COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT (CETA): 11TH MEETING OF THE BILATERAL DIALOGUE ON BIOTECH MARKET ACCESS ISSUES. 4 MARCH 2019, BRUSSELS. Page 4. Download from: https://trade.ec.europa.eu/doclib/docs/2019/september/tradoc_158341.pdf (Last accessed 22.08.2022).

³⁹ See 12th Canada-EU Biotech Market Access Issues Dialogue, 21 October 2020: Internal Briefing Canada. Page 20. Download from: https://www.foodwatch.org/fileadmin/-/INT/free-trade-agreements/documents/CETA_report_2022/A-2020-00090_Interim_Release.pdf (Last accessed 24.08.2022). – Full quote: „We have heard that the EFSA process is getting slower, despite recent initiatives to improve efficiency. As the majority of the world becomes more experiences in biotechnology product assessments, we expect the process to take less time. As you know, we are concerned that these delays could impede trade between Canada and the EU. At this time, Canadian industry has expressed an interest in bringing to your attention two specific traits on that has now been in the EFSA risk assessment stage for 8 years – Corteva (formerly Pioneer) canola event DP73496 (EFSA-GMO-NL-2012-109), and a second more recent one – NuSeed DHA canola, NS-B50027-4 (EFSA-GMO-NL-2019-160). We hope these applications of interest will be processed by EFSA expeditiously and in accordance with the regulatory timelines that have been established“.



CETA UNDERMINES EUROPEAN CONSUMER AND ENVIRONMENTAL PROTECTIONS

Canada often applies lower standards when it comes to protecting the environment, consumers and the climate. Some examples include Canada allowing many pesticides that are banned in the EU because of their toxicity,⁴⁰ genetically modified crops being cultivated extensively in Canada's fields,⁴¹ tar sands oils, which are particularly damaging to the environment and the climate, being extracted on a large scale and the fossil fuels obtained from them being exported to Europe, among other places,⁴² and the industrial and agricultural lobbies having significant influence in Canada. Preparatory documents for CETA committee meetings also show how blunt the Canadian government is in seeking input from agricultural and industrial groups in order to represent their interests with the EU.⁴³

CETA gives the Canadian government considerable power to assert these lobby interests with the EU. Already, the Canadian government often represents the interests of agricultural and industrial groups in CETA committees. Canada has repeatedly demanded the EU give up its precautionary principle, which is designed to prevent risk. Until now, relatively high consumer protection standards have applied within the EU. One of the aims of these standards is to ensure our food is toxin-free. (For more information on the EU's precautionary principle, see page 32).

The CETA trade agreement threatens to lower these standards. CETA is a so-called 'new-generation trade agreement'. In earlier agreements, tariff reductions took centre stage. But CETA is about more than that. Rules designed to protect consumers and the environment are to be relaxed. These rules were put in place to ensure, for example, that imported food does not contain any dangerous substances, such as bacteria or pesticides. However, many of these rules are presented in the context of the trade agreement as "barriers to trade", i.e. as an attempt to impede international trade in the same way tariffs do. As such, these rules are also referred to as "non-tariff barriers to trade", in contrast to "tariff barriers to trade" (essentially meaning customs duties).

⁴⁰ See https://www.ciel.org/wp-content/uploads/2017/07/CIEL_CETA-Pesticide-Report_6july2017.pdf (Last accessed 22.08.2022) Page 5f: "many EU decisions to ban active substances are based, at least in part, on a lack of sufficient information, including bans on dichlorvos, acephate, atrazine, carbaryl, chloropicrin, diazinon, permethrin, [...]. Conversely, Canada allows these substances based on risk assessments. These assessments must necessarily rely on assumptions and extrapolations where there are gaps in information". - Status of all listed active substances double checked in EU and CAN databases, 17 June 2022: https://ec.europa.eu/food/plants/pesticides/eu-pesticides-database_en (Last accessed 22.08.2022); <https://pest-control.canada.ca/pesticide-registry/en/active-ingredient-search.html> (Last accessed 22.08.2022).

⁴¹ <https://www.isaaa.org/resources/publications/briefs/54/executivesummary/default.asp> (Last accessed 22.08.2022).

⁴² <https://thomas-fritz.org/default/ceta-dreckiger-freihandel> (Last accessed 22.08.2022).

⁴³ An email from the Canadian government to Canadian industry representatives as part of the 12th annual CAN-EU Biotech Dialogue Industry Consultation, 23.09.2020, p. 238. https://www.foodwatch.org/fileadmin/-INT/free-trade-agreements/documents/CETA_report_2022/A-2020-00090_Interim_Release.pdf (Last accessed 24.08.2022).



Adobe Stock, 244021725, Dusan Kosic

The CETA agreement contains a crucial piece of leverage to weaken consumer and environmental protections. At the moment, the EU can simply apply its own rules when importing products from Canada and can decide autonomously if it wants to enhance these rules. These rules determine, for example, how often food has to be checked for pesticide residue when being imported, or how meat is checked for hygiene deficiencies. With CETA, all that changes. CETA committees⁴⁴ can overturn the EU's import rules by recognising Canada's rules as "equivalent". This would mean Canada could simply apply its own rules to products it exports into the EU, and the EU would then no longer be able to autonomously change its own rules on imports from Canada. Then, for example, meat with lower hygiene standards or crops with higher levels of pesticide residue could come into the EU.

This process is known as the "recognition of rules as equivalent". CETA committees can therefore decide that a trading partner's rules for imports are also recognised as equivalent. The only catch here is that rules would be recognised as equivalent that, in reality, are really not equivalent. In the EU, there are often rules that better protect consumers and the environment. But CETA committees could decide it makes no difference whether the EU's rules or Canada's more relaxed rules are applied to imports. The committees could apply

⁴⁴ Both the so-called SPS Committee and the CETA Joint Committee can decide on so-called "recognition of equivalence".

this kind of “mutual recognition of standards” to a variety of products, meaning two different sets of standards would be in force. Companies in the EU would have to continue to comply with EU rules, while companies in Canada could export into the EU based on lower standards.

This so-called “recognition of equivalence” gives CETA committees significant power. This is due to the international legal nature of the agreement, i.e. when standards are recognised as equivalent, they are subject to international law. As an international trade agreement, CETA stipulates which rules the EU or any member state should adopt for imports from Canada. This means the rules of the EU and its member states that contradict the CETA agreement are automatically in violation of international law.

CETA COULD PREVENT IMPROVEMENT OF EU PROTECTION STANDARDS

Decisions made by CETA committees can result in the EU no longer being able to act independently. This would be the case, for example, if the EU wanted to lower the amount of pesticide residue allowed to be present in imported products. Once the EU has recognised Canadian standards as equivalent, it would not be able to raise its own standards on imports coming from Canada without first consulting Canada. As such, the EU could not act independently, because that would constitute a breach of international law.⁴⁵ Canada would therefore have a de facto veto. And Canada’s consent is hardly to be expected, given the Canadians are already pushing for rules to be relaxed on consumer protection. This would have serious consequences for many aspects of everyday life, affecting citizens, consumers, employees, as well as companies directly. Furthermore, CETA also weakens parliaments.

In an exchange of letters with foodwatch, the European Commission confirmed that provisions on hygiene controls or pesticide agreements also fall under the so-called dispute settlement process.⁴⁶ If there is a disagreement within a consultation process on raising standards, Canada could initiate the dispute settlement process. That means in future, it will be much more difficult for the EU to raise standards, for example, if new scientific findings on the harmfulness of pesticides were to be discovered. As a result, CETA threatens to freeze EU standards at the status quo.

⁴⁵ See the results of a report by Prof. Wolfgang Weiß, Speyer University: (Results) Report on the Regulatory Powers of CETA Trade Agreement Bodies with Regard to Mutual Recognition of Standards Relevant to SPS and TBT. Prepared on behalf of foodwatch International, 03.07.2020. https://www.foodwatch.org/fileadmin/-/INT/free-trade-agreements/documents/CETA_report_2022/Prof_Dr_Wolfgang_Weiss_FolgeGutachten_zu_Vertragsgremien_und_ggs_Anerkennung_SPS_TBT.pdf (Last accessed 24.08.2022).

⁴⁶ See Annex_1_-_correspondence_with_Europ.Commission.pdf (foodwatch.org) (Last accessed 22.08.2022).

European standards on protecting the environment and consumers are higher than those in Canada, but this level of protection can and should be expanded within the European Union, for example, if the precautionary principle is not fully implemented and the biodiversity of agricultural land continues to decline, despite specific CAP (Common agricultural policy) measures.⁴⁷ If the EU agrees on mutual recognition of certain standards as part of CETA, improvements within Europe could become more difficult, or even be prevented entirely.

Canada is already trying to use CETA to block greater consumer and environmental protections. In the so-called SPS Committee, the Canadian government wants to prevent EU member states from raising their own standards. According to the Canadian government's own internal preparatory documents for the SPS Committee debate,

*“the goal is that EU member states refrain from taking non-scientifically justified, unilateral measures, particularly ones that are incompatible with scientific decisions at EU level”.*⁴⁸

“Scientific decisions” is a misleading term, it is actually referring to the “risk-based approach” used in Canada. Their approach is no more scientific than the EU's, theirs is simply a different approach that follows the aftercare principle rather than the precautionary principle. That means, in Canada, products are first approved for the market and must be scientifically proven afterwards to be harmful before they can be withdrawn from the market. With the precautionary principle that applies within the European Union, however, the harmlessness of products must first be proven before they can be released onto the market. For European citizens, protection standards would fall if Europe gave into pressure from Canada. (Details on the EU precautionary principle at risk can be found from page 32).

⁴⁷ https://www.eca.europa.eu/Lists/ECADocuments/INSR20_13/INSR_Biodiversity_on_farmland_DE.pdf (Last accessed 22.08.2022).

⁴⁸ See internal briefing notes from Canada for the CETA SPS Committee, 26 and 27 March 2018. Page 178/ 182. Download from: <https://www.foodwatch.org/fileadmin/-NL/CETA-scans.pdf> (Last accessed 22.08.2022).

THE EU'S PRECAUTIONARY PRINCIPLE IS IN JEOPARDY.

The precautionary principle⁴⁹ ensures consumers and the environment are protected in a proactive manner. Substances can be banned from the moment there is scientific evidence of their harmful effects. A well-known example is how the EU banned beef from animals that have been treated with growth hormones. The total ban on highly toxic pesticides in the EU is also based on this precautionary principle. The precautionary principle is therefore an important tool in protecting Europe's citizens.

Preventive consumer health protections are expressly anchored in the EU's general principles and requirements of food law. "In specific circumstances where, following an assessment of available information, the possibility of harmful effects on health is identified but scientific uncertainty persists, provisional risk management measures necessary to ensure the high level of health protection chosen in the Community may be adopted (...)"⁵⁰

The former EU Trade Commissioner Phil Hogan said in May 2020 about the precautionary principle in CETA:

"And finally, nothing in CETA affects the precautionary principle, which is enshrined in EU treaties".⁵¹

The reality is different. Opponents of the precautionary principle – including the agricultural industry – want to undermine this principle through EU trade agreements. The Canadian government is also pursuing this goal in debates on pesticides at the SPS Committee. In an internal preparatory document, the Canadians stated the following:⁵²

"The long-term goal is for the EU to move away from a hazard-based cut-off criteria as a basis for regulatory decisions".⁵³

⁴⁹ Compare information on the precautionary principle from Germany's Environment Agency at <https://www.umweltbundesamt.de/themen/nachhaltigkeit-strategien-internationales/umweltrecht/umweltverfassungsrecht/vorsorgeprinzip> (Last accessed 22.08.2022) and Prof. Dr Peter-Tobias Stoll et al. in a legal opinion for foodwatch e.V.: CETA, TTIP and Europe's precautionary principle. An investigation into the regulations on sanitary and phytosanitary measures, technical barriers to trade and regulatory cooperation in the CETA agreement and in accordance with EU proposals on TTIP. Berlin/Göttingen, June 2016.

The precautionary principle is also expressly regulated in Article 34(1) of Germany's Unification Treaty as a voluntary commitment by the legislature and is therefore applicable federal law. The precautionary principle is further enshrined in Article 20a of the German Constitution. This charges the state with protecting the natural foundations of life, and as a responsibility to future generations, which can also require precautionary measures, in addition to avoiding danger.

⁵⁰ Regulation (EC) No 178/2002, Article 7.1. Specifically in Recitals 20 and 21, as well as in Article 6 (Risk Analysis) section 3 (Risk Management), and Article 7 (Precautionary Principle).

⁵¹ See speech by former Trade Commissioner Phil Hogan to the Dutch Senate on 12.05.2020. Download from: https://ec.europa.eu/info/news/opening-statement-ceta-hearing-2020-may-12_en (Last accessed 22.08.2022).

⁵² In March 2018, the CETA SPS Committee discussed current revisions to the REFIT Evaluation on pesticide residue and import tolerances. For more information, see: Nina Holland, Corporate Europe Observatory: Toxic Residues through the back door Pesticide corporations and trade partners pressured EU to allow banned substances in imported crops. Download from: <https://corporateeurope.org/en/2020/02/toxic-residues-through-back-door> (Last accessed 22.08.2022).

⁵³ See internal briefing notes from Canada for the CETA SPS committee, 26 and 27 March 2018. Page 166. Download from: <https://www.foodwatch.org/fileadmin/-NL/CETA-scans.pdf> (Last accessed 22.08.2022).



“Hazard-based cut-off criteria” means the EU’s precautionary principle. In these internal documents, Canada clearly states its intention to attack the EU’s precautionary principle.

The precautionary principle⁵⁴ is also enshrined in Article 191 of the Treaty on the Functioning of the European Union.⁵⁵ It allows risks to the environment and consumers to be prevented from the outset. If there is scientific evidence that substances are dangerous, the EU can ban or restrict the use of these substances. The burden of proof therefore lies with those bringing these substances into circulation. They must prove the substances are harmless to health. This principle is of considerable importance in consumer policies and in protecting human, animal and plant health.

The precautionary principle is based on the knowledge that substances can have exceedingly harmful effects, even in very small concentrations, for example, because some

pollutants trigger hormonal effects, because of the combination effect, and because damage often occurs with a delay, meaning the connection with the pollutant is often not recognised.⁵⁶

In Canada, on the other hand, they apply a risk-based approach, i.e. the aftercare principle, where substances cannot be banned preventively. Instead, it must first be proven at which concentration a substance becomes harmful to humans and the environment. Even substances with particularly questionable properties may therefore be used up to certain concentrations.

Precautionary consumer and environmental protections are an achievement of the EU. They represent a commitment to the public interest. In Canada, on the other hand, corporations have an easier time. Preventive protections are also being attacked within the EU by influential interest groups, such as genetic engineering firms and pesticide manufacturers.

⁵⁴ Compare information on the precautionary principle from Germany’s Environment Agency at <https://www.umweltbundesamt.de/themen/nachhaltigkeit-strategien-internationales/umweltrecht/umweltverfassungsrecht/vorsorgeprinzip> (Last accessed 22.08.2022) and Prof. Dr. Peter-Tobias Stoll et al. in a legal opinion for foodwatch e.V.: CETA, TTIP and Europe’s precautionary principle. An investigation into the regulations on sanitary and phytosanitary measures, technical barriers to trade and regulatory cooperation in the CETA agreement and in accordance with the EU’s proposals on TTIP. Berlin/Göttingen, June 2016. Page 12. The precautionary principle is also expressly regulated in Article 34(1) of Germany’s Unification Treaty as a voluntary commitment by the legislature and is therefore applicable federal law. The precautionary principle is further enshrined in Article 20a of the German Constitution. This charges the state with protecting the natural foundations of life, and as a responsibility to future generations, which can also require precautionary measures, in addition to avoiding danger.

⁵⁵ See EUR-Lex - 12016E191 - EN - EUR-Lex (europa.eu) (Last accessed 22.08.2022).
⁵⁶ For more information, see BUND: Maja Volland, BUND (ed.): How CETA and TTIP undermine the EU’s precautionary principle and endanger environmental standards. Berlin, September 2016. Page 4. Download from: https://www.bund.net/fileadmin/user_upload_bund/publikationen/ttip_und_ceta/ttip_und_ceta_vorsorgeprinzip_hormonelle_schadstoffe.pdf (Last accessed 22.08.2022).

Internal European Commission documents suggest the EU is indeed backing down against Canada. Preparatory files for the 2020 SPS Committee meeting show both parties were prepared to review two crucial annexes to the CETA trade agreement.⁵⁷ This could have dangerous consequences, as they involve, among other things, “plant health measures”, including use of pesticides. The EU writes:

“The EU is ready to engage with Canada on ideas to review these annexes [...]. The EU aims at an outcome whereby trade facilitating measures in the plant health area could be included in the annexes”.^{58 59}

This means the EU is already giving notice that it intends to rewrite annexes to the CETA agreement or fill the empty spaces with new text. The European Commission has also indicated the direction in which these changes should go: “trade facilitation measures”, meaning lower safety standards, so companies can export more cheaply and more easily. Will the European Commission give in to pressure from Canada? Will it accept lower standards for European citizens?

This example shows how the CETA agreement will provide a way in through the back door for corporate interests. For years, pesticide manufacturers in the EU have tried to soften the rules on pesticides. Canada already has far more relaxed rules than the EU. Now, the Canadian government can use secret CETA committee meetings to further soften the rules in the EU too.

Furthermore, there are several annexes to the CETA agreement that are (partially) left blank for now, destined to be filled with content by the committees at a later stage. For example, one particularly controversial topic has so far been ignored: the annex that is supposed to contain regulations on pesticides remains empty for now. Even if CETA committees determine the content at a later date, the European Parliament will still have no say. It can neither agree nor disagree – it cannot even take part in discussions. This affects at least four annexes to the CETA agreement.⁶⁰

⁵⁷ Annex 5 C (Process of recognition of regional conditions: Plant pests) and 5 E (section B: phytosanitary measures). See working document from the European Commission ‘Sanitary and phytosanitary (SPS) market access to Canada – preparation of the third SPS Committee under CETA’ of 9 October 2020, reference Ares (2020) 5411373. Page 4ff. https://www.foodwatch.org/fileadmin/INT/free-trade-agreements/documents/CETA_report_2022/Fn59.pdf (Last accessed 24.08.2022).

⁵⁸ See *ibid.*

⁵⁹ Original quote: “The EU is ready to engage with Canada on ideas to review these annexes in respect of the regulatory procedures to be followed to review annexes. The EU aims at an outcome whereby trade facilitating measures in the plant health area could be included in the annexes”.

⁶⁰ The following annexes are affected: Annex 5C PROCESS OF RECOGNITION OF REGIONAL CONDITIONS Animal diseases; Plant pests; Parts of ANNEX 5-D GUIDELINES TO DETERMINE, RECOGNISE AND MAINTAIN EQUIVALENCE Determination and Recognition of Equivalence; ANNEX 5-E RECOGNITION OF SANITARY AND PHYTOSANITARY MEASURES SECTION B Phytosanitary Measures; ANNEX 5-H PRINCIPLES AND GUIDELINES TO CONDUCT AN AUDIT OR VERIFICATION; ANNEX 5-J IMPORT CHECKS AND FEES SECTION B Fees. European Commission website: <https://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/> (Last accessed 22.08.2022).

foodwatch, Mehr Demokratie and Campact filed a constitutional complaint against CETA in Germany in 2016. The European Commission had promised no decisions would be made by the Joint Committee in reference to Article 30.2 of CETA, i.e. affecting, for example, the amendment of annexes, until the final decision of Germany's Constitutional Court was issued.⁶¹ In February 2022, Germany's Constitutional Court ruled on the provisional application of CETA.⁶² This obligation is therefore no longer valid. Since March 2022 (the publication of Germany's Constitutional Court's ruling), decisions can now be made. However, at the time of publication (July 2022) foodwatch was not yet aware of any decisions being issued by the Joint Committee.⁶³

IT HAS NOT BEEN FINALLY DECIDED WHETHER CETA IS CONSTITUTIONAL

However, Germany's Constitutional Court had already made clear in 2016 that the decisions of CETA committees must be tied back to the national parliament. According to the Constitutional Court, this takes place through the mandate of the German representative at the Council of the European Union. In 2016, the Council and member states made the statement that the position taken by the EU and its member states on the CETA Joint Committee should be unanimous (when it comes to issues within the competence of member states).⁶⁴ Due to this requirement for unanimity, the German representative at the Council has a de facto veto.

The court only considered the provisional application of CETA to be constitutional because these criteria are currently met. If a ratification law does not meet these requirements, a new constitutional complaint may well have a chance of succeeding.

The Court has therefore made clear it has doubts as to the constitutional nature of CETA committees in their anticipated form.

⁶¹ <https://data.consilium.europa.eu/doc/document/ST-13463-2016-REV-1/en/pdf>, page 14, declaration 18. (Last accessed 22.08.2022).

⁶² Germany's Constitutional Court – Decisions – Unsuccessful constitutional complaints and disputes between bodies against the provisional application of the CETA free trade agreement (Last accessed 22.08.2022).

⁶³ See explanations of the decision-making process on CETA in the council minutes: ABl.EU 2017 L 11, page 15. Download from: <https://eur-lex.europa.eu/legal-content/DE/TEXT/PDF/?uri=OJ:L:2017:011:FULL&from=DE> (Last accessed 22.08.2022).

⁶⁴ <https://data.consilium.europa.eu/doc/document/ST-13463-2016-REV-1/en/pdf> (Last accessed 22.08.2022).

EXAMPLE: MEAT HYGIENE CONTROLS

Meat hygiene controls serve to protect consumers from meat that is spoiled or contaminated with germs. The responsible CETA committee⁶⁵ can decide that lower Canadian hygiene standards are recognised as equivalent for imports into Europe.

The European Parliament can no longer reverse this type of decision. Once product standards or processes have been recognised as equivalent, this decision can only be changed via a procedure that depends on the consent of both parties to the agreement. This would give Canada a de facto permanent veto over EU import standards.⁶⁶

Effective food hygiene controls are vital to protecting the health of consumers. So far, the CETA trade agreement has stipulated that live animal imports are 100%-controlled. However, the responsible SPS Committee can recommend to the Joint Committee at any time that controls be carried out less frequently. The SPS Committee can decide, at any moment, that Canada's weaker control standards are simply accepted as equivalent.⁶⁷ There is therefore a risk that the level of hygiene controls in place in the EU will decline significantly.

This is worrying for several reasons. It endangers the health of EU citizens. When importing live animals, there are far-reaching implications if animal health is not adequately controlled: even importing individual infected animals can lead to animal diseases spreading.

Swine fever is a clear example of how devastating animal diseases can be. In September 2020, individual wild boars infected with African swine fever came from Poland across the border into Germany. The first reported case of an infected wild boar carcass found in Germany led to China and other third-countries banning all pork imports from Germany in order to protect their own meat industries from the disease. It was a heavy blow for Germany's export-focussed pork producers.

⁶⁵ SPS Committee stands for the "Committee on Sanitary and Phytosanitary Measures", also referred to as the "Joint Management Committee on Sanitary and Phytosanitary Measures".

⁶⁶ See the results of a report by Prof. Wolfgang Weiß, Speyer University: Report on the Regulatory Powers of CETA Trade Agreement Bodies with Regard to Setting Limit Values for Plant Protection Product Residue. Prepared on behalf of foodwatch International in April 2020.

⁶⁷ See CETA Annex 5-J, page 116. Download from: <http://data.consilium.europa.eu/doc/document/ST-10973-2016-ADD-3/de/pdf#page=59> (Last accessed 22.08.2022).



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EXAMPLE: PESTICIDES THROUGH THE BACK DOOR

In the EU, the use of many pesticides is restricted or even banned for toxicological reasons, since pesticides can have a negative impact on soil, water and biodiversity in agriculture and, ultimately, on plant, animal and human health. Use of plant protection products is therefore strictly regulated through EU regulations.⁶⁸ The EU determines how much pesticide residue is permitted in food and feed.⁶⁹ Pesticides that contain active substances of particular concern can be completely banned in the EU, for example, if they are suspected of being carcinogenic or toxic to the environment. European legislation on pesticides provides for so-called “hazard-based cut-off criteria”. The precautionary principle applies in the EU, unlike in Canada (see page 32).

In principle, the EU’s legally-defined limit values also apply to imported food and feed. However, these rules have already been relaxed for imports.⁷⁰

Canada often uses pesticides that are banned in the EU because of their toxicity.⁷¹ Will Canadian producers soon be allowed to send food and agricultural products containing residue of these banned pesticides to Europe on a large scale? Internal CETA Agricultural Committee documents from 2020 show that Canada intends to ensure that it can:

⁶⁸ https://ec.europa.eu/info/food-farming-fisheries/sustainability/environmental-sustainability/low-input-farming/pesticides_de (Last accessed 22.08.2022).

⁶⁹ So-called ‘maximum residue levels – MRL’; https://ec.europa.eu/food/plants/pesticides/maximum-residue-levels/eu-legislation-mrls_en (Last accessed 22.08.2022).

⁷⁰ Countries that want to export to the EU can apply for so-called ‘import tolerances’. When approved, imported food no longer has to comply with EU limit values. Higher pollutant levels are then permitted. In fact, residue of highly toxic pesticides can often be detected in food that has been imported into Europe. See Testbiotech: how dangerous is glyphosate? July 2013. Page 4. Download from: https://www.testbiotech.org/sites/default/files/Basistext_Glyphosat_Testbiotech__0.pdf (Last accessed 22.08.2022).

⁷¹ See https://www.ciel.org/wp-content/uploads/2017/07/CIEL_CETA-Pesticide-Report_6july2017.pdf (Last accessed 22.08.2022) Page 5f: “many EU decisions to ban active substances are based, at least in part, on a lack of sufficient information, including bans on dichlorvos, acephate, atrazine, carbaryl, chloropicrin, diazinon, permethrin, [...]. Conversely, Canada allows these substances based on risk assessments. These assessments must necessarily rely on assumptions and extrapolations where there are gaps in information”. - Status of all listed active substances double checked in EU and CAN databases, 17 June 2022: https://ec.europa.eu/food/plants/pesticides/eu-pesticides-database_en (Last accessed 22.08.2022); <https://pest-control.canada.ca/pesticide-registry/en/active-ingredient-search.html> (Last accessed 22.08.2022).



“Canada has concerns about the EU’s hazard-based regulatory decision making and approach to assessing plant protection products and impacts on cut-offs for import tolerances. This threatens the continued market access to the EU of Canadian exports of agricultural commodities valued at over 2.7 billion CAN \$ [€1.88 billion] annually”.^{72 73}

What are the European Commission and Canada negotiating here? Will poison soon end up on our plates? This remains unknown due to the strict secrecy around CETA committees. One thing is clear: Canada is using CETA to put pressure on the EU. Canadian exporters will be able to send agricultural products containing pesticide residue into the EU, even when those very same pesticides are banned in the EU.

CONCLUSION:

CETA undermines the protection of EU citizens, the climate and the environment. It is a threat to Europe’s precautionary principle, as Canada urges the EU to accept a risk-based approach/aftercare principle.

⁷² See Ref. Ares (2021)1164445 – 10/02/2021: 2020 Canada-EU CETA Agriculture Committee meeting. 21 September 2020, page 22 and 23. https://www.foodwatch.org/fileadmin/-INT/free-trade-agreements/documents/CETA_report_2022/Fn74.pdf (Last accessed 24.08.2022).

⁷³ Canada is seeking additional information on the import tolerance process for setting MRLs applicable to products imported from third-countries. Until a clear and predictable process for import tolerances is set, Canada along with like-minded countries, requests transitional measures to maintain current MRLs for products not renewed.



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