

Germany: conditional consent to signing CETA

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A legal challenge to the signing of the EU-Canada free trade deal (CETA) which had been backed up by the signatures of 200,000 German citizens was submitted to the Constitutional Court in Karlsruhe as part of an accelerated procedure. The court rejected the motion on 13 October but did, however, attach certain conditions. The German minister for the economy will be allowed to sign CETA only on the assumption that Germany will be able to withdraw from the deal at a later date should the court determine in further proceedings that CETA is contrary to the German constitution. Furthermore, Germany has the right to accept only those CETA conditions which negotiating is unequivocally within the EU's competences. Thus CETA cannot undermine the competences of the national state, especially in the areas of the judiciary system, investment protection, labour law, regulations concerning intellectual property rights and maritime traffic.

Commentary

- The court in Karlsruhe attempted to use the judgment of Solomon to solve the dispute between the supporters and opponents of CETA in Germany. On the one hand, it allowed the government to initially accept the deal, which is expected to offer German corporations the largest gains (profits in the EU.). On the other hand, it was trying to calm down the left-wing circles in Germany who fear that the deal will increase the pressure from foreign corporations on the German judiciary system, will have a detrimental effect on food protection standards and will adversely affect small and medium-sized businesses. The court's decision only rules that CETA does not imply any temporary negative consequences for Germany that would have required its immediate blocking. If the introduction of CETA brings economic benefits to Germany, its citizens may be more ready to accept a similar deal with the USA (TTIP), although the Social Democrats are increasingly sceptical about this. This is placing the head of the SPD, Sigmar Gabriel, in a difficult situation because he holds the post of minister for the economy.
- The court's decision is an element of the doctrine it has adopted which provides it and the Bundestag with the ability to oversee international agreements. This is why it left the door open for it to be able to rule in the future that some of the CETA provisions are unconstitutional. The court used a similar trick in the past when it pushed through the requirement that the federal government should seek consent from the Bundestag each time it wants to set an aid programme for eurozone member states with debt issues, and when it was investigating whether European Central Bank quantitative easing was in

compliance with the German constitution.

- The court in its decision partly yielded to the pressure from German business circles and international opinion, since it could be expected that signing CETA would be temporarily withheld until the consequences of the deal have been considered in a comprehensive manner. Nevertheless, it took into account the argumentation that a complete blocking of the deal might escalate the crisis in the EU and undermine its reliability abroad. Withholding the deal would disappoint German corporations which will benefit from reducing the customs duty rates in trade with Canada.