

GERMAN LAW NEWSFLASH – January 2017

Impact of the CETA agreement

Dear [Vorname],

With this we present to you our latest Newsflash. Our topic this time is the Comprehensive Economic and Trade Agreement, better known as CETA, between the European Union and Canada. The treaty has been signed by the European Commission and Canada after long and controversial discussions and negotiations. But before being able to shape the future of the EU-Canadian economy it has to first be ratified by the parliaments of the EU member states within the next few years.

We hope that it meets your interest. Any remarks and feedback are always welcome.

Best regards,

Thomas & Team

How it used to be

CETA is now the final result after a long period of negotiations between the EU and Canada with the goal of nearly abolishing all taxes, liberalizing trading and services, opening the market for public tendering and also to ease direct investments. The general idea is to make use of the economic interdependence of the EU and Canada in order to strengthen and increase the economy for both sides.

The public in general, and especially in Germany, is very sensitive as they fear that European standards could be lowered and low quality products might overtake the market once the treaty is concluded. There is also widespread fear that any compensatory damages awarded in the investor-state-tribunals – which allows foreign corporations to sue states for perceived losses but does not allow states to do the same to corporations – will have to be shouldered by taxpayers. All of these concerns led to a constitution complaint in Germany, which was signed by 125,000 people. The court ruled that CETA is in principle compatible with the



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Grundgesetz (German constitution) but that a one-sided opt-out option for Germany has to be added.

What is new

Canadian and European taxes will be eliminated by 98.6% and 98.7% respectively. This will mainly affect the automobile and agricultural industries. Overall up to €470 billion should be economized on taxes and public tendering will be made available for the treaty parties. This will allow European companies to apply directly in the public tendering process to Canadian communes for the first time. Such deals had a business volume of €82 billion in 2011. Especially for medium-sized business, this opens up the opportunity to expand their businesses in partner countries and vice versa.

Another major change is that the EU and Canada have agreed to accept the other's conformity assessment evaluations for certain goods, such as electronic devices and machines, which guarantee that products have been tested and meet certain standards. In regards to farm produce, food, and drinks, about 140 Geographically Indicators (GIs) - designations given to foods and drinks from specific regions in Europe - will be protected in Canada. Therefore, European companies who sell the above goods will be able to export them more easily into Canada. However, sensitive food products will be given limited quotas. For instance, hormone-treated meat and genetically modified organisms will still be restricted by EU law.

The barriers for the import and export of technical goods will also be lowered. In addition, the EU and Canada will recognize more professional qualifications, which will allow workers from each side to work in their profession in the respective countries of the treaty parties. Accountants, auditors and engineers will especially benefit from this. Regulation for direct investment will also be lowered. This will especially affect finance and telecommunication service providers and the cargo shipping industry. In the past, the Canadian government had to give permission for foreign direct investments. Now investments under €1 billion will be permission-free.

The most controversial parts of the treaty are the investment protection clauses. In these clauses, investors are granted the right to fair and equitable treatment and protection from

unlawful expropriation. In the case of wrongdoing, the foreign investor is granted the right to sue the government. A previous popular example in Germany is the case of Vattenfall where Vattenfall sued Germany for its decision to phase out nuclear power. Vattenfall dropped the case for a settlement deal with the German government receiving a payment of approximately €23 billion.

As for reaction to the strong public discussion regarding the private courts for Investor-State Dispute Settlement (ISDS), which were mainly discussed in the context of the TTIP negotiations, the original treaty was modified and a permanent court with permanent judges, the ICS (Investment Court System), will be established for any disputes regarding CETA. A court of appeal will be established and documents will be made available for the public to increase the level of transparency.

What does it mean for the future

In Germany, the ratification is not expected to be done before the federal elections in the third quarter of 2017. So it will still take some time until the treaty is fully enacted. Once it is, new business opportunities will arise for both European and Canadian companies, especially for those with a strong export sector.

Unlikely as a model for the “hard Brexit” that the UK government wants to take, and even less likely for the “US first” approach of the Trump administration, the success of CETA can still be a shining torch on how international treaties can be negotiated.

Especially in the light of the US opting out of the TPP negotiations, the EU needs to stand united and should continue to aim for good trading treaties like CETA which, despite its difficulties, could be a good example leading forward in these uncertain times.

tkslegal Berlin LLP is a German law firm and notarial office, with a focus on Corporate and M&A and Real Estate law and transactions. Feel free to contact us with any questions or

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