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**NOTE**

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Subject: Comprehensive Economic and Trade Agreement (CETA) between  
Canada, of the one part, and the European Union and its Member States,  
of the other part  
– Statements to the Council minutes

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**D R A F T**

Delegations will find attached the Statements and Declarations to be entered on the occasion of the adoption by the Council of the decision authorising the signature of CETA.

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## STATEMENTS:

**The following statements and declarations form an integral part of the context in which the Council adopts the decision to authorise the signature of CETA on behalf of the Union. They will be entered into the Council minutes on this occasion.**

### 1. **Statement from the Council on Article 20.12:**

The Council declares that the agreement reached by Member States on the criminal enforcement of intellectual property rights will not constitute a precedent for future agreements between the European Union and third countries.

### 2. **Statement from the Council relevant to the provisional application of Article 20.7:**

The Council declares that its decision, to the extent that it provides for provisional application by the EU of article 20.7 does not prejudice the allocation of competences between the EU and the Member States insofar it concerns moral rights protected by the Berne Convention.

### 3. **Statement from the Council relevant to the provisional application of transport and transport services:**

The Council of the European Union declares that its decision, to the extent that it provides for provisional application by the EU of provisions in the field of transport services, falling within the scope of shared competences between the EU and the Member States, does not prejudice the allocation of competences between them in this field and does not prevent the Member States from exercising their competences with Canada for matters not covered by this Agreement, or with another third country in the field of transport services falling within the said scope.

4.

**Statement from the Council relevant to the provisional application of Chapters 22, 23 and 24:**

The Council of the European Union declares that its decision, to the extent that it provides for provisional application by the EU of provisions in Chapters 22, 23 and 24, falling within the scope of shared competences between the EU and the Member States, does not prejudge the allocation of competences between them in this field and does not prevent the Member States from exercising their competences with Canada for matters not covered by this Agreement, or with another third country.

**5. Statement from the Council on the application of Regulation (EU) No 912/2014:**

The Council notes Regulation (EU) No 912/2014 of 23 July 2014 establishing a framework for managing financial responsibility linked to investor-to-state dispute settlement tribunals established by international agreements to which the European Union is party applies to all claims and disputes directed against the EU or any of its member states pursuant to Section F (Resolution of investment disputes between investors and states) of Chapter 8 of CETA.

6.

## **Déclaration de la Commission concernant la protection des indications géographiques:**

1. Tout au long des négociations actuelles et futures sur les indications géographiques, dont les AOP et les IGP, la Commission entretiendra des contacts étroits avec chaque État membre intéressé grâce aux structures consultatives disponibles et accueillera favorablement les demandes ponctuelles de nouvelles consultations.
2. La Commission s'est engagée à atteindre le meilleur niveau de protection possible pour les indications géographiques enregistrées de l'Union dans le cadre des négociations actuelles et futures portant sur des accords commerciaux compte tenu de la situation du marché de chaque partenaire commercial et des intérêts des États membres.
3. La Commission prend note des préoccupations de la Grèce concernant les résultats relatifs à la protection de certaines indications géographiques dans le cadre de l'accord économique et commercial global (AECG) entre le Canada, d'une part, et l'Union européenne et ses États membres, d'autre part, en particulier en ce qui concerne l'appellation d'origine protégée "Feta". La Commission reconnaît que les résultats obtenus en ce qui concerne les termes relevant de l'article 20.21 de l'AECG, y compris la "Feta", garantissent un niveau de protection qui ne crée pas de précédent pour des négociations en cours ou à venir.
4. La Commission confirme son intention, dans le cadre de l'AECG, de veiller à une mise en œuvre stricte de la protection des indications géographiques prévues dans cet accord, entre autres, de ses dispositions relatives à l'application des mesures administratives et concernant les entités autorisées à recourir aux exceptions prévues à l'article 20.21.
5. La Commission s'engage à faire pleinement usage des mécanismes du Comité des indications géographiques de l'AECG établi en vertu de l'article 26.2 de l'accord, afin que les consommateurs canadiens soient informés de manière adéquate de la qualité intrinsèque et des caractéristiques des produits relevant de l'article 20.21 de l'AECG.
- 6.



La Commission s'engage, dans un délai de cinq ans au plus tard, à recourir aux mécanismes appropriés prévus par l'AECG, en vue de parvenir au même niveau de protection pour toutes les indications géographiques de l'UE énumérées à l'annexe 20-A de l'accord, y compris la "Feta".

7. La Commission s'engage à utiliser pleinement les mécanismes du CETA sur les indications géographiques (IG) établis à l'article 26.2 avec l'objectif d'inclure des nouvelles IG dans l'accord sur la base d'une demande par un Etat membre de UE.
  
8. Compte tenu des possibilités offertes dans le cadre du règlement (UE) n° 1144/2014 du Parlement européen et du Conseil du 22 octobre 2014 relatif à des actions d'information et de promotion concernant les produits agricoles réalisées sur le marché intérieur et dans les pays tiers, la Commission continuera d'apporter aux États membres ainsi qu'aux producteurs et exportateurs de produits faisant l'objet d'une indication géographique, notamment aux plus vulnérables d'entre eux, un soutien afin de promouvoir les indications géographiques.

7.

**Commission Declaration in respect of the protection of the precautionary principle in CETA:**

The Commission confirms that CETA preserves the ability of the European Union and its Member States to apply their fundamental principles governing regulatory activities. For the European Union, those principles include those established in the Treaty of the European Union and the Treaty on the Functioning of the European Union and include, in particular, the precautionary principle as mentioned in Article 191 and reflected in Articles 168(1), 169(1) and (2) of the Treaty on the Functioning of the European Union.

Consequently the Commission confirms that nothing in CETA prevents the application of the precautionary principle in the European Union as set out in the Treaty on the Functioning of the European Union.

**8. Commission Declaration in respect of water:**

The Commission reaffirms that nothing in CETA will interfere with the right of any Member State to decide autonomously how to use and protect its water sources. Article 1.9 in CETA reaffirms that nothing in the Agreement obliges the European Union to permit the commercial use of water for any purpose. CETA would only apply in this sector if the European Union or its Member State autonomously decided to allow the commercial use of water.

Even if a Member State of the European Union does decide to allow a commercial use of water, CETA fully safeguards the possibility for a Member State to reverse its decisions in this regard, as well as the right to regulate the commercial use of water for public policy purposes.

9.

## **Commission Declaration in respect of the content of the legal bases:**

The Commission notes that the Council has added Articles 43 (2), 153 (2) and 192 (1) TFEU to the substantive legal bases proposed by the Commission for the "Council decision on signature of the Comprehensive Economic and Trade Agreement between Canada of the one part, and the European Union and its Member States, of the other part". The Commission considers that this amendment is unwarranted because all the matters concerned fall entirely within the scope of Article 207 TFEU.

### **10. Statement by Ireland:**

Should the implementation of the Agreement by the European Union necessitate a recourse to measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, the provisions of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the functioning of the European Union, will be fully respected.

### **11. Statement by the United Kingdom:**

The United Kingdom welcomes the signature of the Comprehensive Economic and Trade Agreement between Canada of the one part, and the European Union and its Member States, of the other part.

However, the United Kingdom considers that the Agreement contains provisions related to the temporary presence of natural persons for business and readmissions which are pursuant to Title V of Part III of the Treaty on the Functioning of the Union. The United Kingdom recalls that, in accordance with Article 2 of Protocol (No. 21) to the Treaties on the position of the United Kingdom and Ireland in Respect of the Area of Freedom, Security and Justice, no provision of any international agreement concluded by the Union pursuant to that Title shall be binding upon or applicable in the United Kingdom unless, in accordance with Article 3 of the Protocol, it notifies its intention that it wishes to take part in the adoption and application of a proposed measure.

As a result, in accordance with Article 3 of Protocol (No. 21), the United Kingdom notified the President of the Council that, to the extent that the Decisions relate to the temporary presence of natural persons for business, it intends to take part in the Council Decisions.

**12. Statement by Hungary regarding the provisional application of the Comprehensive Economic and Trade Agreement between the European Union and its Member States, of one part, and Canada, of the other part**

Hungary notes that, should it be necessary to amend its domestic legislation for the provisional application by the European Union of those parts of the Comprehensive Economic and Trade Agreement between the European Union and its Member States, of one part, and Canada, of the other part, covered by shared competence, such amendments shall be made, because of the nature of Hungary's legal order, in conjunction with the national ratification process, which Hungary plans to initiate in due time.

**13. Statement by Portugal:**

Bearing in mind the compliance with the principle of competence sharing between the European Union and its Member States, as has been defined by the Treaties, the Decisions of the Council authorizing the conclusion, signature and provisional application of Comprehensive Economic and Trade Agreement between Canada, of the one part, and the European Union and its Member States, of the other part, shall not affect the autonomy of Portugal's decisions regarding issues within its national competence, whose decision to be bound by the Agreement, pursuant to the Constitutional principles and rules, depends on the conclusion of the internal ratification procedures and the entry into force of the agreement in the international legal system.

14.

### **Statement by Greece:**

Greece notes that the results achieved under the negotiations for a Comprehensive Economic and Trade Agreement (CETA) between the European Union and its Member States, of one part and Canada, of the other part, on the protection of “Feta”, a Greek cheese entitled to special protection under the EU legislation on Protected Designation of Origin (PDO) products, provide only a minimum level of protection and, as such, do not constitute a precedent for future EU Trade Agreements with third countries.

Greece considers that PDO “Feta”, as one of the major EU geographical indications, should be given the same level of protection as EU GIs of similar importance. Moreover, Greece considers that the protection of PDO “Feta” as well as of other Geographical Indications substantially contribute to the promotion of regional development, growth and employment within the European Union. The results achieved on the specific protection of PDO “Feta” under the CETA Agreement completely disregard the above target and thus do not ensure its full protection within the Canadian market.

In this framework, Greece takes fully note of the European Commission’s commitment: a) to achieve the best possible level of protection of all EU registered geographical indications (GIs), including PDO “Feta”, under ongoing or future negotiations of Trade Agreements with third countries, taking sufficiently into account the above target and b) to take all measures necessary to protect the PDO “Feta” not only within the EU, but also in third-countries’ markets, notably as regards the use of unfair practices which lead to consumer misinformation.

In this respect, Greece welcomes the European Commission's statement regarding (1) the European Commission's commitment to maintain close contact with the interested Member States throughout ongoing or future negotiations on GIs, (2) its commitment to achieve the best possible level of protection for GIs under ongoing or future negotiations with third countries, (3) its intention to ensure, in cooperation with all competent Canadian authorities, the strict implementation of the protection foreseen under the CETA Agreement, namely the establishment of the proper internal Canadian administrative enforcement mechanisms and procedures in order to adjust the Canadian internal market to CETA provisions, as well as the registration of the Canadian entities entitled to use exceptions under Art 20.21. (4) its commitment to make full use of the mechanisms of the CETA Committee on Geographical Indications so as to ensure that Canadian consumers are adequately informed about the intrinsic quality and characteristics of the products covered under CETA Agreement Art 20.21., (5) its commitment, within five (5) years from the entry into force of the CETA Agreement, to use the appropriate mechanisms, with a view to achieving for all EU GI's therein, including PDO "Feta", the same level of protection, (6) support Greece in its efforts to promote GIs by exploiting the possibilities offered under Regulation (EU) No 1144/2014.

Greece intends to follow up on the above points and considers them as part of the good faith in the implementation of the CETA Agreement.

In presenting this statement, Greece has taken fully into consideration the strategic political and economic dimension of the CETA Agreement.

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*Regarding the scope of provisional application of CETA:*

**15. Statement from the Council:**

The Council of the European Union confirms that only matters within the scope of EU competence will be subject to provisional application.

**16. Statement from the Council relevant to the provisional application of mutual recognition of professional qualifications:**

The Council of the European Union declares that its decision, to the extent that it provides for provisional application by the EU of provisions in the area of mutual recognition of professional qualifications and to the extent that this area falls within the scope of shared competences between the EU and the Member States, does not prejudge the allocation of competences between them in this area and does not prevent the Member States from exercising their competences with Canada or with another third country for matters that would not be covered by this Agreement.

**17. Statement from the Council relevant to the provisional application of protection of workers:**

The Council of the European Union declares that its decision, to the extent that it provides for provisional application by the EU of provisions in the area of protection of workers and to the extent that this area falls within the scope of shared competences between the EU and the Member States, does not prejudge the allocation of competences between them in this area and does not prevent the Member States from exercising their competences with Canada or with another third country for matters that would not be covered by this Agreement.

***Regarding decisions of the CETA Joint Committee:***

**18. Commission declaration:**

It is noted that it is unlikely that any decision amending CETA and any binding interpretation of CETA adopted by the CETA Joint Committee will be required in the near future. Therefore the Commission does not intend to make any proposal under Article 218(9) with a view to amending CETA or with a view to adopting a binding interpretation of CETA before completion of the main proceedings before the German Constitutional Court.

**19. Statement from the Council and the Member States:**

The Council and the Member States recall that where a decision of the CETA Joint Committee falls within the competence of the Member States the position to be taken by the Union and its Member States within the CETA Joint Committee shall be adopted by common accord.

***Regarding the termination of provisional application of CETA:***

**20. Statement from the Council:**

If the ratification of CETA fails permanently and definitively because of a ruling of a constitutional court, or following the completion of other constitutional processes and formal notification by the government of the concerned state, provisional application must be and will be terminated. The necessary steps will be taken in accordance with EU procedures.

**21. Statement by Germany and Austria:**

Germany and Austria declare that as Parties to CETA they can exercise their rights which derive from Article 30.7(3)(c) of CETA. The necessary steps will be taken in accordance with EU procedures.

22.



### **Statement by Poland:**

Poland declares that as a Party to CETA it can exercise its right which derives from Article 30.7.(3)(c) of CETA. All necessary steps will be taken in accordance with the EU procedures.

\* \* \*

### **23. Statement by Slovenia:**

The Republic of Slovenia, while recalling the highly sensitive nature of the investment chapter, considers that the agreement to sign the CETA does not prejudice the principal position of the Republic of Slovenia on the bilateral investment court system. Considering the various concerns expressed during the negotiations on the investment court system provisions the Republic of Slovenia expects that the investment court system is continually further developed in line with the Joint Interpretative Declaration and the law of the European Union, and that the relevant provisions of CETA are adapted in order to introduce the improvements already before the multilateral investment tribunal and appellate mechanism for the resolution of investment disputes is established.

On the basis of the allocation of competences between the European Union and its Member States under the Treaties, the Decision of the Council that authorises the provisional application of the CETA between the European Union and its Member States, of the one part, and Canada, of the other part, shall not affect the autonomy of the Republic of Slovenia to decide to be bound by it with regard to issues falling within its national competence. That implies that reference in the said Agreement to internal requirements and procedures necessary for its provisional application is to be understood in the case of the Republic of Slovenia as referring to the completion of ratification procedures.

The Republic of Slovenia understands that CETA will not affect the European Union or Canada legislation concerning the authorization, placing on the market, growing and labelling of GMOs and products obtained by new breeding technologies and in particular the possibility of the Member States to restrict or prohibit the growing of GMOs on their territory. Additionally, the Republic of Slovenia understands that nothing in the CETA will prevent the application of the precautionary principle in the European Union as set out in the Treaty on the Functioning of the European Union.

In relation to water, the Republic of Slovenia understands that nothing in this agreement creates any obligation for the European Union and its Member States going beyond the EU legislation or limits the right of each Party to adopt or maintain any measure to manage, protect and preserve its water sources (being for commercial, drinking water, mixed or other use), including the right of each Party to limit or cancel the awarded water rights. The Republic of Slovenia also understands that water sources used for drinking water supply (including water sources used for both drinking water supply and any other use) are not covered by paragraph 3 of Article 1.9.

#### 24. **Statement by Austria:**

The Republic of Austria notes that an interinstitutional agreement is being sought to ensure the appropriate involvement of the Member States, through the Council of the European Union, in decisions establishing the positions to be adopted on the Union's behalf in the Joint Committee set up by the Agreement, in accordance with Article 218(9) TFEU. With regard to ensuring the participation of the *Nationalrat* in such decisions, we would refer to Article 23e of the Constitution.

25.

## **Statement by Poland:**

Considering the division of competences between the European Union and its Member States, as defined in the Treaties, it is to be stated that the decisions of the Council authorising the signature, provisional application and conclusion of The Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States of the other part, do not affect the autonomy of decision of the Republic of Poland relating to the issues in the scope of national competence, whose decision on concluding the agreement, in accordance with the principles and constitutional provisions, depends on completion of the internal ratification procedures.

The agreement contains a broad definition of "investment." To avoid doubts as to the agreed wording of the definition of "investment", the Republic of Poland declares its understanding that this concept includes into legal protection only "real" investments. As the "real" investment, protected under the CETA agreement, the Republic of Poland considers firstly, an investment at the stage of post-establishment, understood as the stage of obtaining by the investor of an administrative decision (final / enforceable, that is, which allows to realise the right granted by the said decision), or other final / enforceable consents, required by law, if such a decision or consent is legally required for the investment. Secondly, such a decision or consent must be performed by the investor. Thirdly, the element to demonstrate that the investment is "real", to the understanding of the Republic of Poland, is the actual involvement of capital or other funds in the implementation thereof.

CETA introduces the Investment Court System. The Republic of Poland will seek to establish detailed rules for the selection of judges so that the composition of the court reflects the diversity of legal systems in the European Union and takes into account geographical balance among EU Member States. An ideal solution would be selection of a judge with a deep knowledge of the Polish legal system.

The CETA agreement gives to its Parties the right to impose regulations within their territory to achieve legitimate policy objectives. The Republic of Poland declares that it considers as justified, in particular, the regulations to ensure a high level of protection of human life and health, including fair labour law rules, privacy and data protection, a high level of protection for plants and animals, food safety and quality, environment protection and consumer interests protection, including in such sensitive areas as the effective control and the use of genetically modified organisms (GMO). In relation to GMO, the Republic of Poland considers that CETA does not affect existing rules in the EU and guarantees the protection of the EU and Polish markets from unwanted influx of genetically modified products.

The Republic of Poland is convinced that CETA, through elimination of barriers and reduction of trade costs, will bring benefits to broadest groups of our society and to small and medium sized enterprises. While maintaining EU standards, CETA will contribute to improvement of the quality of life of Polish citizens.

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26.

**Déclaration de la Commission sur le maintien de l'interdiction de substances à effet hormonal destinées à stimuler la croissance d'animaux d'exploitation (viande de bœuf traitée aux hormones, par exemple)**

La Commission confirme qu'aucune disposition de l'AECG n'affecte de quelque manière que ce soit la législation de l'Union européenne relative à la viande de bœuf traitée aux hormones. Plus particulièrement, l'AECG n'impose pas d'obligations supplémentaires à l'Union européenne en ce qui concerne l'importation de viande de bœuf traitée aux hormones. L'Union européenne aura donc toute latitude pour continuer à appliquer sa législation existante sur l'interdiction de substances à effet hormonal destinées à stimuler la croissance d'animaux d'exploitation (directive 96/22/CE, modifiée par la directive 2003/74/CE), qui permet de continuer d'interdire la production ou l'importation de viande et de produits provenant d'animaux traités au moyen de telles substances.

Dans ce contexte, la Commission rappelle que les pays tiers autorisés à exporter de la viande vers l'UE, et qui autorisent l'utilisation de stimulateurs de croissance pour l'usage domestique sont obligés d'avoir des systèmes de production distincts en place afin d'assurer l'absence de substances interdites pour les viandes exportées vers l'UE. Ces systèmes doivent être supervisés conformément aux dispositions prévues par la législation de l'UE (directive 96/23 /EC relative à des mesures pour surveiller certaines substances et leurs résidus dans les animaux vivants et les produits d'origine animale). L'AECG ne modifie aucune de ces exigences.

La viande et la viande fraîche en provenance de pays tiers, y compris le Canada, ne peuvent être importées dans l'Union européenne que si elles remplissent toutes les conditions d'importation de l'Union européenne, comme attesté par un certificat vétérinaire provenant de l'autorité compétente du pays exportateur, dont la fiabilité à certifier la conformité avec les exigences d'importation de l'Union européenne a été officiellement reconnue par la Commission.

27.

### **Commission Declaration on Public Procurement:**

The Commission confirms the ability of procuring entities from both parties to apply environmental, social or employment-related criteria and conditions in their procurement procedures. Member States will continue to be able to use the possibility provided for in the EU Public Procurement Directive (Directive 2014/24/EU of 26 February 2014, in particular its Articles 67.2 and 70) to apply such criteria and conditions. In addition, the Parties note that for sub-central entities such as regions, municipalities and other local entities, the procurement chapter applies only to procurement of goods and services above the value threshold of 200.000 SDRs (cf. Annex 19-2). In this respect the European Union's commitments in CETA do not go beyond the European Union's WTO commitments under the Government Procurement Agreement (GPA), as the thresholds in CETA for the procurement of goods and services are the same as those under the GPA. In addition, the CETA thresholds are higher than those that apply under the European Union Public Procurement Directives.

28.

**Commission Declaration on the Belgian compulsory insurance system and mutual associations under Belgian law:**

The European Commission and the Belgian Government consider that no provision of the Agreement will require Belgium to alter the existing system of compulsory insurance.

The European Commission and the Belgian Government confirm that they consider that measures affecting services provided by the Belgian mutual associations pursuant to the Belgian compulsory insurance system, as a service of general interest, are excluded from Chapter 13 (Financial Services) of the Agreement through the operation of Article 13.2(5). Moreover, in the event that some of these services are not classified as financial services, they also consider that such services would fall under the EU reservations on Social Services which states "The EU reserves the right to adopt or maintain any measure with regard to the provision of all social services which receive public funding or State support in any form, and are therefore not considered to be privately funded, and with regard to activities or services forming part of a public retirement plan or statutory system of social security."

Furthermore, the Agreement does not add any additional obligations or disciplines in respect of private healthcare insurance as compared to EU law or existing international obligations of the European Union and Belgium, in particular the World Trade Organisation General Agreement on Trade in Services (GATS).

29.

### **Commission Declaration on Public Services:**

Nothing in the Agreement affects the ability of the European Union and the Member States of the European Union to define and supply public services including services of general economic interest.

Nothing in the Agreement will prevent or interfere in the operation of services of general economic interest provided consistently with Articles 14 and 106 of the Treaty on the Functioning of the European Union, Protocol 26 to the Treaty of European Union and the Treaty on the Functioning of the European Union and Article 36 of the Charter of Fundamental Rights of the European Union. In particular, it is understood that, to the extent that such services are not services supplied in the exercise of governmental authority, the obligations assumed (including the market access obligations in Articles 8.4, 9.6 and 13.6 of the Agreement) and the reservations taken by the EU and its Member States, with respect to such services including public services such as education, health, and social services, ensure that the Member States may continue to operate services of general economic interest as they see fit, consistently with EU law. It is noted that the Investment Court System does not apply to provisions dealing with access to markets.

30.



**Commission Declaration on the continuation of the EU legislation concerning genetically modified products, concerning food, feed and cultivation:**

The Commission confirms that CETA does not imply any change to EU legislation as regards the risk assessment and authorisation, labelling and traceability of genetically modified food and feed as set out in Regulation (EC) 1829/2003 of the European Parliament and of the Council on genetically modified food and feed and Regulation (EC) No 1830/2003 of the European Parliament and of the Council of 22 September 2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC. Regarding genetically modified products for cultivation, the EU authorisation procedure as set out in Directive 2001/18/EC continues to apply and Member States maintain the possibility to restrict or prohibit the cultivation of genetically modified organisms (GMOs) in their territory under the conditions laid down in Directive (EU) 2015/412 of the European Parliament and of the Council of 11 March 2015 amending Directive 2001/18/EC.

**31. Commission Declaration on the meaning of the term "substantial business activities" in Article 8.1 of the Agreement:**

The term "substantial business activities" in CETA is to be understood in the same sense as the term "substantive business operations" used in Article V(6) and XXVIII(m) of the WTO General Agreement on Trade in Services. The EU has formally submitted a notification to the WTO<sup>1</sup> stating that it interprets this term as equivalent to the term "effective and continuous link with the economy" utilised in the General Programme for the abolition of restrictions on freedom of establishment adopted by the Council on 15 January 1962 pursuant to Article 54 of the Treaty Establishing the European Economic Community<sup>2</sup>.

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<sup>1</sup> WT/REG39/1 of 24 April 1998.

<sup>2</sup> OJ. No. 2 15.1.1962, p.32.

It results that the Commission considers that a Canadian corporation not owned by Canadian nationals could only bring a dispute pursuant to Chapter 8, Section F of the Agreement where it can establish that it has substantive business activities in Canada having an effective and continuous link with the Canadian economy, in the sense of establishment as applied under the EU Treaty. This will be the basis of the Commission's attitude in the implementation of CETA.

**32. Déclaration du Conseil et de la Commission sur l'agriculture dans le cadre de l'AECG:**

Le Conseil et la Commission rappellent que le commerce des produits agricoles est une question sensible dans le cadre des négociations commerciales que l'Union européenne mène avec des pays tiers, en particulier avec un grand exportateur de produits agricoles comme le Canada.

Le Conseil et la Commission notent que, dans l'AECG, l'Union européenne a fait des gestes d'ouverture en matière d'accès au marché pour certains produits sensibles (viandes de bœuf et de porc par exemple), lesquelles sont contrebalancées par des gestes d'ouvertures du Canada qui répondent à des intérêts européens importants concernant des produits d'exportation tels que le fromage, les vins et les boissons spiritueuses, les fruits et les légumes, les produits transformés et les indications géographiques.

Parallèlement, le Conseil et la Commission relèvent que l'Union européenne a maintenu dans l'AECG le niveau de traitement tarifaire applicable au-delà des concessions limitées en termes de volumes sur les produits sensibles. En outre, l'Union européenne conserve sa capacité à utiliser tous les instruments de sauvegarde nécessaires pour protéger pleinement tout produit agricole sensible dans l'Union conformément à ses engagements dans le cadre de l'OMC. Les instruments de sauvegarde, fondés sur l'article XIX du GATT et l'accord de l'OMC sur les sauvegardes, comprennent le règlement (UE) 2015/478 du Parlement européen et du Conseil relatif au régime commun applicable aux importations ainsi que l'article 194 du règlement (UE) n°1308/2013 du Parlement européen et du Conseil portant organisation commune des marchés des produits agricoles qui, entre autres, font obligation à la Commission d'agir dans les cinq jours ouvrables qui suivent la réception d'une demande d'un État membre.

La Commission suivra attentivement l'évolution des échanges de produits agricoles sensibles, notamment avec le Canada, y compris en recourant aux procédures prévues à l'annexe 2 - Démantèlement tarifaire et à l'annexe 2 - B Déclaration des Parties sur l'administration des contingents tarifaires de l'AECG, et elle utilisera pleinement les instruments susvisés chaque fois qu'il y aura lieu de le faire. Le Conseil continuera d'examiner cette question.

En cas de déséquilibre de marché pour un produit agricole, quel que soit le secteur, la Commission s'engage aussitôt, et en tout cas dans les 5 jours ouvrables, à prendre les mesures nécessaires, dans le cadre de la réglementation de l'UE existante, en vue du rétablissement de l'équilibre du marché.

La Commission confirme que L'AECG/CETA n'a aucun impact sur les instruments de soutien des produits agricoles prévus par la législation de l'UE, conformément aux engagements de l'UE au titre de l'OMC.

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33.

### **Declaration by Bulgaria:**

Bulgaria underlines the importance of ensuring visa-free travel between the EU and Canada so that their citizens can equally benefit from the trade and economic opportunities provided by the Comprehensive Economic and Trade Agreement.

Bulgaria recalls the legal commitment of both parties to make every effort to achieve, as soon as possible, visa-free travel between their territories for all citizens with a valid passport, as provided in the Strategic Partnership Agreement between Canada and the EU and its Member States.

Bulgaria declares that the completion of its internal procedures, required for the Comprehensive Economic and Trade Agreement to enter into force under Art.30.7, par.2 of the Agreement, is dependent on the full lifting of visas for all Bulgarian citizens.

34.

## **Statement by the Commission and the Council on investment protection and the Investment Court System ('ICS')**

CETA presents a major reform of investment dispute resolution. Based on the principles common to the courts of the European Union and its Member States and of Canada, as well as to international courts recognised by the European Union and its Member States and Canada, such as the International Court of Justice and the European Court of Human Rights, it represents a step forward in reinforcing respect for the rule of law. The Commission and the Council consider that this mechanism revised on the basis of the terms of this statement constitutes a step towards the establishment of a multilateral investment court which will, in the long term, become the body responsible for resolving disputes between investors and States.

All of these provisions having been excluded from the scope of provisional application of CETA, the Commission and the Council confirm that they will not enter into force before the ratification of CETA by all Member States, each in accordance with its own constitutional procedures.

The Commission is committed to further review of the dispute settlement mechanism (ICS) as soon as possible, and allowing sufficient time so that Member States can consider it in their ratification processes, according to the following principles:

There will be a rigorous process for selecting all judges of the Tribunal and the Appellate Tribunal, under the control of the European Union institutions and the Member States, with the aim of guaranteeing the judges' independence and impartiality, as well as the highest degree of competence. As regards the European judges in particular, the selection process must also ensure that the richness of European legal traditions is reflected, above all over the long term. Consequently:

- o Candidate European judges will be nominated by the Member States, which will also participate in the assessment of candidates.
- o Without prejudice to the other conditions set out in Article 8.27.4 of the CETA agreement, the Member States will propose candidates who fulfil the criteria set out in Article 253(1) TFEU.
- o The Commission, in consultation with the Member States and Canada, will ensure an equally rigorous assessment of the candidacies of the other judges of the Tribunal.

The judges will be paid by the European Union and Canada on a permanent basis. The system should progress towards judges who are employed full time.

The ethical requirements for members of the Tribunals, already provided for in CETA, will be set out in detail as soon as possible and allowing sufficient time so that Member States can consider them in their ratification processes, in an obligatory and binding code of conduct (which is also already provided for in CETA). This Code will include in particular:

- o detailed rules of conduct applicable to candidates for appointment as members of the Tribunal or the Appellate Tribunal, in particular concerning of disclosure of their past and current activities that might affect their appointment or the exercise of their duties;
- o detailed rules of conduct applicable to members of the Tribunal and the Appellate Tribunal during their term of office;
- o detailed rules of conduct applicable to members of the Tribunal and the Appellate Tribunal at the end of their term of office; including the prohibition of the exercise of specific duties or professions for a specified period after the end of their term of office;
- o a sanction mechanism in the event of non-compliance with the rules of conduct which is effective and fully respects the independence of judicial power.

There will be better and easier access to this new court for the most vulnerable users, namely SMEs and private individuals. To that end:

- o The adoption by the Joint Committee of additional rules, provided for in Article 8.39.6 of the CETA, intended to reduce the financial burden imposed on applicants who are natural persons or small and medium-sized enterprises, will be expedited so that these additional rules can be adopted as soon as possible.
- o Irrespective of the outcome of the discussions within the Joint Committee, the Commission will propose appropriate measures of (co)-financing of actions of small and medium-sized enterprises before that Court and the provision of technical assistance.

the appeal mechanism laid down in Article 8.28 of the CETA will be organised and improved to render it wholly fit to ensure consistency of decisions rendered at first instance and thus to contribute to legal certainty. This presupposes in particular:

- o The composition of the Appellate Tribunal will be organised so as to ensure the greatest possible continuity.
- o Each member of the Appellate Tribunal will have the obligation to keep informed of decisions by divisions of the Appellate Tribunal of which he or she is not a member.
- o The Appellate Tribunal should have the option to sit as a 'Grand Chamber' in cases raising important questions of principle or on which the divisions of the Appellate Tribunal are divided.

Moreover, the Council supports the European Commission's efforts to work without delay towards the establishment of a multilateral investment court, which will automatically replace the bilateral system established by CETA.

35.

**Déclaration du Royaume de Belgique relative aux conditions de pleins pouvoirs par l'Etat fédéral et les Entités fédérées pour la signature du CETA**

<p align="center"><b>Déclaration du Royaume de Belgique relative aux conditions de pleins pouvoirs par l'Etat fédéral et les Entités fédérées pour la signature du CETA</b></p>	<p align="center"><b>Verklaring van het Koninkrijk België betreffende de voorwaarden inzake de volmachten van de federale staat en de deelstaten voor de ondertekening van CETA</b></p>
<p>A. La Belgique précise que, conformément à son droit constitutionnel, le constat que le processus de ratification du CETA a échoué de manière permanente et définitive au sens de la déclaration du Conseil du 18/10/16, peut résulter des procédures d'assentiment engagées tant au niveau du Parlement fédéral qu'au niveau de chacune des assemblées parlementaires des Régions et des Communautés.</p>	<p>A. België verduidelijkt dat, overeenkomstig zijn grondwettelijk systeem, de vaststelling dat het ratificatieproces van CETA permanent en definitief mislukt is in de zin van de verklaring van de Raad van 18/10/16, het gevolg kan zijn van de instemmingsprocedures ingeleid zowel op het niveau van het Federaal Parlement als op het niveau van elk van de parlementen van de Gewesten en de Gemeenschappen.</p>
<p>Les autorités concernées procéderont, chacune pour ce qui les concerne, à intervalles réguliers à une évaluation des effets socio-économiques et environnementaux de l'application provisoire du CETA.</p>	<p>De betrokken overheden zullen, elk afzonderlijk, regelmatig een evaluatie maken van de socio-economische en milieugevolgen van de voorlopige toepassing van CETA.</p>



<p>Au cas où l'une des entités fédérées informerait l'Etat fédéral de sa décision définitive et permanente de ne pas ratifier le CETA, l'Etat fédéral notifiera au Conseil au plus tard dans un délai d'un an à compter de la notification par ladite entité de l'impossibilité définitive et permanente pour la Belgique de ratifier le CETA. Les dispositions nécessaires seront prises conformément aux procédures de l'UE.</p>	<p>Indien een van de deelstaten de federale overheid op de hoogte zou brengen van zijn definitieve en permanente beslissing om CETA niet te ratificeren, zal de federale overheid ten laatste binnen een termijn van één jaar te rekenen vanaf de kennisgeving door die deelstaat, de Raad op de hoogte brengen van de definitieve en permanente onmogelijkheid van België om CETA te ratificeren. De nodige maatregelen zullen genomen worden overeenkomstig de EU-procedures.</p>
<p>B. La Belgique a pris acte de ce que l'application provisoire du CETA ne s'étend pas à diverses dispositions du CETA, notamment en matière de protection d'investissement et de règlement des différends (ICS), conformément à la décision du Conseil relative à l'application provisoire du CETA. Elle a en outre pris acte du droit de chaque partie à mettre fin à l'application provisoire du CETA conformément à son article 30.7.</p>	<p>B. België heeft kennis genomen van het feit dat de voorlopige toepassing van CETA niet geldt voor verschillende bepalingen van CETA, in het bijzonder inzake bescherming van investeringen en beslechting van geschillen (ICS) overeenkomstig het besluit van de Raad over de voorlopige toepassing van CETA. België heeft bovendien kennis genomen van het recht van elke partij om de voorlopige toepassing van CETA te beëindigen overeenkomstig artikel 30.7.</p>

<p>La Belgique demandera un avis à la Cour Européenne de Justice concernant la compatibilité de l'ICS avec les traités européens, notamment à la lumière de l'Avis 1/94.</p>	<p>België zal het Europees Hof van Justitie om een advies vragen over de verenigbaarheid van ICS met de Europese verdragen, meer bepaald in het licht van Advies 1/94.</p>
<p>Sauf décision contraire de leurs Parlements respectifs, la Région wallonne, la Communauté française, la Communauté germanophone, la Commission communautaire francophone et la Région de Bruxelles-Capitale n'entendent pas ratifier le CETA sur la base du système de règlement des différends entre investisseurs et Parties, prévu au chapitre 8 du CETA, tel qu'il existe au jour de la signature du CETA.</p>	<p>Behoudens andersluidende beslissing van hun respectieve parlementen, hebben het Waals Gewest, de Franse Gemeenschap, de Duitstalige Gemeenschap, de Franse Gemeenschapscommissie en het Brussels Hoofdstedelijk Gewest niet de intentie CETA te ratificeren op grond van het systeem voor de geschillenbeslechting tussen investeerders en Partijen, bedoeld in hoofdstuk 8 van CETA, in zijn huidige vorm op de dag van de ondertekening van CETA.</p>
<p>La Région flamande, la Communauté flamande et la Région de Bruxelles-Capitale saluent en particulier la déclaration conjointe de la Commission européenne et du Conseil de l'Union européenne à propos de l'Investment Court System.</p>	<p>Het Vlaams Gewest, de Vlaamse Gemeenschap en het Brussels Hoofdstedelijk Gewest verwelkomen de gemeenschappelijke verklaring van de Europese Commissie en de Raad van de Europese Unie inzake Investment Court System.</p>

<p>C. La déclaration du Conseil et des Etats membres traitant des décisions du Comité conjoint du CETA en matière de coopération réglementaire pour des compétences relevant des Etats membres confirme que ces décisions devront être prises de commun accord par le Conseil et ses Etats-membres.</p>	<p>C. De verklaring van de Raad en de lidstaten betreffende de besluiten van de Gemengde Commissie van CETA inzake de samenwerking op het gebied van de regelgeving voor bevoegdheden van de lidstaten, bevestigt dat deze besluiten getroffen zullen moeten worden in onderlinge overeenstemming door de Raad en zijn lidstaten.</p>
<p>Dans ce contexte, les gouvernements des entités fédérées indiquent que, pour les matières relevant de leurs compétences exclusives ou partielles au sein du système constitutionnel belge, elles entendent soumettre toute coopération en matière de réglementation à l'accord préalable de leur Parlement, et informer de toute décision réglementaire qui en découlerait.</p>	<p>In deze context, geven de regeringen van de deelstaten aan dat voor de materies die uitsluitend of gedeeltelijk tot hun bevoegdheden behoren binnen het Belgisch grondwettelijk systeem, ze de bedoeling hebben om iedere samenwerking inzake de regelgeving voor voorafgaande toestemming aan hun Parlement voor te leggen, en te informeren over elk regelgevend besluit dat daaruit voortvloeit.</p>

<p>D. L'Etat fédéral ou une entité fédérée compétente en matière agricole se réserve le droit d'activer la clause de sauvegarde en cas de déséquilibre de marché, y compris lorsque ce déséquilibre est identifié pour un seul produit. Des seuils précis seront déterminés endéans les 12 mois qui suivent la signature du CETA déterminant ce que l'on entend par déséquilibre de marché. La Belgique défendra les seuils ainsi déterminés dans le cadre du processus de décision européen.</p>	<p><b>D.</b> De federale overheid of een deelstaat bevoegd voor landbouw behoudt zich het recht voor de vrijwaringsclausule te activeren in geval van marktonevenwicht, ook wanneer dit onevenwicht slechts bij één enkel product wordt vastgesteld. Duidelijke drempels zullen worden bepaald binnen 12 maanden na de ondertekening van CETA, die zullen bepalen wat bedoeld wordt met marktonevenwicht. België zal in het kader van het Europese beslissingsproces de bepaalde drempels verdedigen.</p>
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La Belgique réaffirme que le CETA n'affectera pas la législation de l'Union européenne concernant l'autorisation, la mise sur le marché, la croissance et l'étiquetage des OGM et des produits obtenus par les nouvelles technologies de reproduction, et en particulier la possibilité des Etats membres de restreindre ou d'interdire la culture d'OGM sur leur territoire. En outre, la Belgique réaffirme que le CETA n'empêchera pas de garantir l'application du principe de précaution dans l'Union européenne tel que défini dans le traité sur le fonctionnement de l'Union européenne et, en particulier, le principe de précaution énoncé à l'article 191 et pris en compte à l'article 168, paragraphe 1, et à l'article 169, paragraphes 1 et 2, du TFEU.

België herbevestigt dat CETA geen invloed zal hebben op de wetgeving van de Europese Unie inzake de toelating, het op de markt brengen, de groei en de etikettering van GGO's en producten verkregen door nieuwe voortplantingstechnieken en in het bijzonder de mogelijkheid voor de lidstaten om de teelt van GGO's op hun grondgebied te beperken of te verbieden. Bovendien herbevestigt België dat het CETA de toepassing van het voorzorgsbeginsel in de Europese Unie niet zal tegenhouden, zoals vastgelegd in het verdrag over de werking van de Europese Unie en in het bijzonder het voorzorgsbeginsel zoals in artikel 191 vermeld en opgenomen in artikel 168, paragraaf 1 en in artikel 169, paragraaf 1 en 2 van het VWEU.

<p>En cas de demande concernant les indications géographiques (AOP et IGP) d'une des entités fédérées, le gouvernement fédéral s'engage à la relayer sans délai à l'Union européenne.</p>	<p>In geval van een vraag betreffende geografische indicaties (BOB en BGA) van een van de deelstaten , verbindt de federale regering zich ertoe om deze onverwijld te bezorgen aan de Europese Unie.</p>
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**36. Statement by the Council Legal Service on the legal nature of the Joint Interpretative Instrument:**

The Council Legal Service hereby confirms that, by virtue of Article 31(2)(b) of the Vienna Convention on the Law of Treaties, the Joint Interpretative Instrument to be adopted by the parties on the occasion of the signature of CETA, of which it forms the context, constitutes a document of reference that will have to be made use of if any issue arises in the implementation of CETA regarding the interpretation of its terms. To this effect, it has legal force and a binding character.

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