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**Commission des Affaires étrangères et européennes, de la  
Défense, de la Coopération et de l'Immigration**

**Procès-verbal de la réunion du 17 octobre 2016**

Ordre du jour :

Information par le Ministre des Affaires étrangères et européennes sur l'accord économique et commercial global entre le Canada et l'Union européenne (CETA)

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Présents : M. Claude Adam, M. Marc Angel, Mme Anne Brasseur, remplaçante de M. Eugène Berger, M. Yves Cruchten, M. Gusty Graas, M. Jean-Marie Halsdorf, M. Fernand Kartheiser, M. Laurent Mosar, Mme Lydie Polfer, M. Marc Spautz, M. Serge Wilmes

M. Marc Baum, Mme Viviane Loschetter, observateurs

M. Charles Goerens, Mme Viviane Reding, M. Claude Turmes, membres du Parlement européen

M. Jean Asselborn, Ministre des Affaires étrangères et européennes

Mme Rita Brors, Administration parlementaire

Excusés : M. Eugène Berger, Mme Claudia Dall'Agnol, M. Claude Wiseler

M. Georges Bach, membre du Parlement européen

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Présidence : M. Marc Angel, Président de la Commission

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**Information par le Ministre des Affaires étrangères et européennes sur l'accord économique et commercial global entre le Canada et l'Union européenne (CETA)**

Le Ministre informe que trois éléments ont été ajoutés au projet de la

déclaration interprétative conjointe présentée lors de la réunion du 10 octobre 2016, à savoir :

- une précision soulignant le principe de précaution,
- la référence à l'article 31 de la Convention de Vienne, et
- l'élaboration d'un code de conduite pour assurer l'indépendance des juges du tribunal de règlement de différends.

Au stade actuel, aucun gouvernement des Etats membres n'a de problèmes avec le contenu de l'accord CETA. La Cour constitutionnelle allemande a retenu que l'application provisoire ne pourra concerner que les parties qui sont dans la compétence communautaire, que le comité conjoint à créer dans le cadre de l'instrument de règlement de différends devra se composer de fonctionnaires et n'aura aucun pouvoir législatif, et que l'Allemagne devra avoir la possibilité à tout moment de sortir de l'accord. Des pourparlers sont encore en train de se faire en ce qui concerne la position des instances régionales en Belgique.

Il est proposé que le Ministre des Affaires étrangères et européennes fasse une déclaration sur l'accord CETA le jeudi 20 octobre 2016 en séance plénière, indépendamment des résultats du Conseil du 18 octobre 2016.

#### Discussion

Les éléments suivants peuvent être retenus de la discussion.

Le principe de précaution est ancré dans le Traité sur le fonctionnement de l'Union européenne (TFUE). Les références sont retenues dans une déclaration de la Commission européenne sur CETA annexée au présent procès-verbal.

Un membre du Parlement européen est d'avis que la précision sur le principe de précaution ajoutée dans la déclaration interprétative conjointe n'est pas suffisante. Par ailleurs, il critique que la restriction des compétences du comité conjoint à créer dans le cadre de l'instrument de règlement de différends n'est pas assez claire. Dans le cas où un Etat membre tient à ajouter une réserve nationale, il propose que le Luxembourg fasse de même pour mieux protéger les services publics. Le Ministre répond que les textes du CETA et de la déclaration interprétative conjointe sont très clairs en ce qui concerne le droit de chaque Etat membre de définir les services publics. Dans le cadre de l'ICS, il ne sera pas possible pour une entreprise d'engager un procès pour raison de perte économique due à une modification de la législation.

Un autre membre du Parlement européen est d'accord avec le Ministre pour dire que l'ICS est un instrument pouvant servir de modèle à d'autres accords. Par ailleurs, l'oratrice est d'avis que l'accord CETA tient compte des critiques exprimées envers le TTIP, de sorte que CETA peut être considéré comme base de ce qui sera acceptable à l'avenir. Par contre, si le CETA n'aboutira pas, l'Union européenne aura de grandes difficultés à conclure des accords de libre-échange dans le futur.

Luxembourg, le 4 novembre 2016

La Secrétaire-administratrice,  
Rita Brors

Le Président,  
Marc Angel

**Joint Interpretative Declaration on  
the Comprehensive Economic and Trade Agreement (CETA)  
between Canada and the European Union and its Member States**

The European Union and its Member States and Canada make the following Joint Interpretative Declaration at the time of signature of the Comprehensive Economic and Trade Agreement (CETA).

CETA embodies the shared commitment of Canada and the European Union and its Member States to free and fair trade in a vibrant and forward-looking society. It is a modern and progressive trade agreement which will help boost trade and economic activity, while also promoting and protecting our shared values and perspectives on the role of government in society.

CETA creates new opportunities for trade and investment for Europeans and Canadians, its outcome reflects the strength and depth of the EU-Canada relationship, as well as the fundamental values that we cherish. In particular, we wish to recall:

- that integration with the world economy is a source of prosperity for our citizens;
- our strong commitment to free and fair trade, whose benefits must accrue to the broadest sections of our societies;
- that the principal purpose of trade is to increase the well-being of citizens, by supporting jobs and creating sustainable economic growth;
- that Canada and the European Union and its Member States recognise the importance of the right to regulate in the public interest and have reflected it in the Agreement;
- that economic activity must take place within a framework of clear and transparent regulation defined by public authorities.

The European Union and its Member States and Canada will therefore continue to have the ability to achieve the legitimate public policy objectives that their democratic institutions set, such as public health, social services, public education, safety, environment, public morals, and the promotion and protection of cultural diversity. CETA will also not lower our respective standards and regulations related to food safety, product safety, consumer protection, health, environment or labour protection. Imported goods, service suppliers and investors must continue to respect domestic requirements, including rules and regulations. The European Union and its Member States and Canada reaffirm the commitments with respect to precaution that they have undertaken in international agreements.

This interpretative declaration provides, in the sense of Article 31 of the Vienna Convention on the Law of Treaties, a clear and unambiguous statement of what Canada and the European Union and its Member States agreed in a number of CETA provisions that have been the object of public debate and concerns. This includes, in particular, the impact of CETA on the ability of governments to regulate in the public interest, as well as the provisions on investment protection and dispute resolution, and on sustainable development, labour rights and environmental protection.

### **Right to regulate**

CETA preserves the ability of the European Union and its Member States and Canada to adopt and apply their own laws and regulations that regulate economic activity in the public interest, to achieve legitimate public policy objectives such as the protection and promotion of public health, social services, public education, safety, the environment, public morals, social or consumer protection and the promotion and protection of cultural diversity.

### **Regulatory cooperation**

CETA provides Canada and the European Union and its Member States with a platform to facilitate cooperation between their regulatory authorities, with the objective of achieving better quality of regulation and more efficient use of administrative resources. This cooperation will be voluntary: regulatory authorities can cooperate on a voluntary basis but do not have an obligation to do so, or to apply the outcome of their cooperation.

## **Public Services**

The European Union and its Member States and Canada affirm and recognise the right of governments, at all levels, to provide and support the provision of public services including in areas such as public health and education, social services and housing and the collection, purification and distribution of water.

CETA does not prevent governments from regulating the provision of these services in the public interest. CETA will not require governments to privatise any service nor prevent governments from expanding the range of services they supply to the public.

CETA will not prevent governments from providing public services previously supplied by private service suppliers or from bringing back under public control services that governments had chosen to privatise. CETA does not mean that contracting a public service to private providers makes it irreversibly part of the commercial sector.

## **Investment Protection**

CETA includes modern rules on investment that preserve the right of governments to regulate in the public interest including when such regulations affect a foreign investment, while ensuring a high level of protection for investments and providing for fair and transparent dispute resolution. CETA will not result in foreign investors being treated more favourably than domestic investors. CETA does not privilege recourse to the investment court system set up by the agreement. Investors may choose instead to pursue available recourse in domestic courts.

CETA clarifies that governments may change their laws, regardless of whether this may negatively affect an investment or investor's expectations of profits. Furthermore, CETA clarifies that any compensation due to an investor will be based on an objective determination by the Tribunal and will not be greater than the loss suffered by the investor.



CETA includes clearly defined investment protection standards, including on fair and equitable treatment and expropriation and provides clear guidance to dispute resolution Tribunals on how these standards should be applied.

CETA requires a real economic link with the economies of Canada or the European Union in order for a firm to benefit from the agreement and prevents “shell” or “mail box” companies established in Canada or the European Union by investors of other countries from bringing claims against Canada or the European Union and its Member States. The European Union and Canada are committed to review regularly the content of the obligation to provide fair and equitable treatment, to ensure that it reflects their intentions (including as stated in this Declaration) and that it will not be interpreted in a broader manner than they intended.

In order to ensure that Tribunals in all circumstances respect the intent of the Parties as set out in the Agreement, CETA includes provisions that allow Parties to issue binding notes of interpretation. Canada and the European Union and its Member States are committed to using these provisions to avoid and correct any misinterpretation of CETA by Tribunals.

CETA moves decisively away from the traditional approach of investment dispute resolution and establishes independent, impartial and permanent investment Tribunals. The members of these Tribunals will be individuals qualified for judicial office in their respective countries, and these will be appointed by the European Union and Canada for a fixed term. Cases will be heard by three randomly selected members. Strict ethical rules for these individuals have been set to ensure their independence and impartiality, the absence of conflict of interest, bias or appearance of bias. The European Union and its Member States and Canada have agreed to begin immediately further work on a code of conduct to further ensure the impartiality of the members of the Tribunals, on the method and level of their remuneration and the process for their selection. The common aim is to conclude the work by the entry into force of CETA.

CETA is the first agreement to include an Appeal mechanism which will allow the correction of errors and ensure the consistency of the decisions of the Tribunal of first instance.

Canada and the European Union and its Member States are committed to monitoring the operation of all these investment rules, to addressing in a timely manner any shortcomings that may emerge and to exploring ways in which to continually improve their operation over time.

Therefore, CETA represents an important and radical change in investment rules and dispute resolution. It lays the basis for a multilateral effort to develop further this new approach to investment dispute resolution into a Multilateral Investment Court.

### **Trade and Sustainable Development**

CETA reconfirms the longstanding commitment of Canada and the European Union and its Member States to sustainable development and is designed to foster the contribution of trade to this objective.

Accordingly, CETA includes comprehensive and binding commitments for the protection of workers' rights and the environment. The European Union and its Member States and Canada attach the highest priority to ensuring CETA delivers tangible outcomes in these areas, thereby maximising the benefits the agreement will bring for workers and for the environment.

### **Labour Protection**

CETA commits Canada and the European Union and its Member States to improving their laws and policies with the goal of providing high levels of labour protection. CETA provides that they cannot relax their labour laws in order to encourage trade or attract investment. CETA does not change the rights of workers to negotiate, conclude and enforce collective agreements and to take collective action.

CETA commits the European Union and its Member States and Canada to the ratification and effective implementation of the fundamental Conventions of the International Labour Organisation (ILO). Canada has ratified seven of the fundamental Conventions and has launched the process to ratify the remaining Convention (*Right to Organise and Collective Bargaining Convention, 1949 (C98)*).

CETA also creates a framework for Canada and the European Union and its Member States to cooperate on trade-related labour issues of common interest, including through involvement of the ILO and a sustained dialogue with civil society, to ensure that CETA encourages trade in a way that benefits workers and in a manner supportive of labour protection measures.

### **Environmental Protection**

CETA commits the European Union and its Member States and Canada to provide for and encourage high levels of environmental protection, as well as to strive to continue to improve such laws and policies and their underlying levels of protection.

CETA explicitly recognises the right of Canada and of the European Union and its Member States, to set their own environmental priorities, to establish their own levels of environmental protection and to adopt or modify their relevant laws and policies accordingly, mindful of their international obligations, including those set by multilateral environmental agreements. At the same time in CETA the European Union and its Member States and Canada have agreed not to lower levels of environmental protection in order to encourage trade or investment.

CETA includes commitments towards the sustainable management of forests, fisheries and aquaculture. It also includes commitments to cooperate on trade-related environmental issues of common interest such as climate change where the implementation of the Paris Agreement will be an important shared responsibility for the European Union and its Member States and Canada.



## **Review and Stakeholder Consultation**

Commitments related to trade and sustainable development, trade and labour and trade and environment are subject to dedicated and binding assessment and review mechanisms. Canada and the European Union and its Member States are fully committed to make effective use of these mechanisms throughout the life of the agreement. Furthermore, they are committed to initiating an early review of these provisions, including with a view to the effective enforceability of CETA provisions on trade and labour and trade and the environment.

Stakeholders, including employers, unions, labour and business organisations and environmental groups, have a key role to play in supporting the effective implementation of CETA. The European Union and its Member States and Canada are committed to seeking regularly the advice of stakeholders to assess the implementation of CETA. They support their active involvement, including through the establishment of a CETA Civil Society Forum.

## **Water**

CETA does not oblige Canada or the European Union and its Member States to permit the commercial use of water if they do not wish to do so. CETA fully preserves their ability to decide how to use and protect water sources. Furthermore, CETA will not prevent the reversal of a decision to allow the commercial use of water.

## **Government Procurement**

CETA maintains the ability of procuring entities within the European Union and its Member States and Canada, to use environmental, social and labour-related criteria, such as the obligation to comply with and adhere to collective agreements, in procurement tenders. Canada and the European Union and its Member States will be able to use such criteria in their procurement in a way that is not discriminatory and does not constitute an unnecessary obstacle to international trade. They will be able to continue to do so under CETA.

## **Preferences for Canada's Aboriginal Peoples**

In CETA Canada has included exceptions and carve-outs to ensure its ability to adopt measures that preserve rights and preferences for Aboriginal peoples. Canada is committed to active engagement with Indigenous partners to ensure the ongoing implementation of CETA continues to reflect their interests.

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**COMMISSION DECLARATIONS: CETA****Commission Declaration in respect of the protection of Geographical Indications:**

1. *The Commission will, throughout ongoing or future negotiations on geographical indications, maintain close contact with each interested Member State through the available consultative structures and will welcome ad hoc requests for further consultations.*
2. *The Commission is committed to achieving the best possible level of protection of Union registered geographical indications under ongoing or future negotiations of trade agreements in light of the market situation in each trading partner and the interests of the Member States.*
3. *The Commission takes note of Greece's concerns as to the results regarding the protection of certain geographical indications under 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, in particular in respect of the Protected Designation of Origin Feta. The Commission recognises that the results achieved regarding the terms covered under CETA Article 20.21, including FETA, provide a level of protection that does not create a precedent for ongoing or future negotiations.*
4. *The Commission confirms its intention, in view of the CETA agreement, to ensure strict implementation of the protection of geographical indications foreseen in this Agreement, inter alia, of its provisions on administrative enforcement, and regarding entities entitled to use exceptions under Article 20.21.*
5. *The Commission commits to make full use of the mechanisms of the CETA Committee on Geographical Indications established under Article 26.2 of the Agreement so as to ensure that Canadian consumers are adequately informed about the intrinsic quality and characteristics of the products covered under CETA Article 20.21.*
6. *The Commission commits within five years at the latest to use the appropriate mechanisms provided within the CETA Agreement, with the aim to achieve for all EU geographical indications listed in Annex 20-A of the Agreement, including Feta, the same level of protection.*
7. *In view of the possibilities offered under Regulation (EU) No 1144/2014 of the European Parliament and of the Council of 22 October 2014 on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries, the Commission will continue offering Member States as well as geographical indication producers and exporters, especially the most vulnerable among them, support to promote geographical indications.*

**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.*

**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.*