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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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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. Commission Declaration in respect of the protection of geographical indications:**

1. The Commission will, throughout ongoing or future negotiations on geographical indications, including PDOs and PGIs, 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 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.
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. The Commission is committed to make full use of the mechanisms established in Article 26.2 of CETA on Geographical Indications (GIs) with the aim of including new GIs in the agreement on the basis of a request by an EU Member State.

8. 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.

**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.

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## **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. Commission Declaration on the continuation of the prohibition of substances with a hormonal action for growth promotion in farm animals (such as hormone-treated beef):**

The European Commission confirms that no provision of the Agreement will in any way affect European Union legislation on hormone-treated beef. In particular, CETA does not contain any additional obligations on the European Union as regards the importation of hormone-treated beef. The European Union will therefore be free to continue to apply its existing legislation on the prohibition of substances having a hormonal action for growth promotion in farm animals (Directive 96/22/EC as amended by Directive 2003/74/EC) which permits it to continue to prohibit the production or import of meat and products provided from animals treated with such substances.

In this context, the Commission recalls that third countries authorised to export meat to the EU, and that do allow the use of growth promoters for domestic use are obliged to have segregated production systems in place to ensure the absence of forbidden substances for meats exported to the EU. These systems have to be supervised in accordance with provisions laid down in EU legislation (Directive 96/23/EC on measures to monitor certain substances and residues thereof in live animals and products of animal origin). CETA does not change any of these requirements.

Meat and fresh meat originating from third countries, including Canada, can only be imported into the European Union if they comply with all the European Union's import conditions, as attested by a veterinary certificate from the competent authority of the exporting country, whose reliability to certify compliance with the European Union's import requirements has been formally recognized by the 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>.

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. Declaration by the Council and Commission on agriculture in CETA:**

The Council and the Commission recall the sensitivity of trade in agricultural products in the European Union's trade negotiations with third countries, in particular with a major agricultural exporter like Canada.

The Council and the Commission note that in CETA the European Union has made opening gestures to afford market access for certain sensitive products such as beef and pork that are balanced out by Canadian opening gestures that satisfy important European exporting interests, such as cheese, wine and spirits, fruit and vegetables, processed products and geographical indications.

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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.

At the same time, the Council and the Commission note that the European Union has maintained in CETA the level of tariff treatment applicable beyond the volume-limited concessions on sensitive products. Furthermore, the European Union retains the ability to use all the safeguard instruments necessary to fully protect all sensitive agricultural products in the Union in accordance with those WTO commitments. The safeguard instruments, based on Article XIX GATT and the WTO Agreement on Safeguards, include Regulation (EU) 2015/478 of the European Parliament and of the Council on Common Rules for Imports and Article 194 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products which inter alia require the Commission to act within five working days of a request from a Member State.

The Commission will monitor closely developments in trade in sensitive agricultural products, notably with Canada, including through the procedures foreseen in Annex 2 – A Tariff Elimination and Annex 2 - B Declaration of the Parties concerning Tariff Rate Quota Administration of CETA, and will use the instruments referred to above fully whenever needed. The Council will maintain this matter under review.

In case of imbalance in the market of an agricultural product in any sector, the Commission commits to take at the earliest, and in any event within five working days, the necessary measures within the framework of existing EU regulations with a view to restore market equilibrium.

The Commission confirms that CETA has no impact on the agricultural product support instruments provided for under EU law, in accordance with the EU's commitments in the WTO.

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### **33. Declaration of the European Commission on the achievement of full visa reciprocity with Canada for Romanian and Bulgarian citizens:**

Visa waiver reciprocity is a principle of the European Union's common visa policy and an objective which the European Commission pursues in a proactive manner in its relations with third countries. The significance of the situation of non-reciprocity between Canada and the European Union in the area of visa policy in the perspective of both the EU-Canada Strategic Partnership Agreement and the preparation of the signing and ratification of the EU-Canada Comprehensive Economic and Trade Agreement (CETA) has also been emphasised consistently by Bulgaria and Romania. In the process leading to the conclusion of CETA, the European Commission will take all necessary steps to ensure that Canada confirms the full abolition of visa requirements for Romanian and Bulgarian citizens within a time-frame satisfactory to all sides, and at the latest by the end of 2017.

### **34. 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.



### **35. Declaration by Romania:**

Romania recalls the value of enhanced mobility, including through visa-free travel between the European Union and Canada for all of our respective citizens, as envisaged in the Canada-EU Strategic Partnership Agreement.

In this context, we reiterate the importance of full and swift implementation of the agreement reached with Canada regarding the lifting, on December 1, 2017, of visa requirements for all Romanian citizens which will further facilitate the strong cultural, educational, family and business relations that exist between Canada and Europe. The full and swift implementation of this agreement will further facilitate a smooth progress of the internal procedures required for the national ratification of both CETA and SPA.

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

CETA aims at 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, as 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, without delay, of the dispute settlement mechanism (ICS), 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 towards the establishment of a multilateral investment court, which will replace the bilateral system established by CETA, once established, and according to the procedure foreseen in CETA.

**37. Statement by the Kingdom of Belgium on the conditions attached to full powers, on the part of the Federal State and the federated entities, for the signing of CETA:**

- A. Belgium wishes to make clear that, in accordance with its constitutional law, the result of the consent procedures undertaken both in the Federal Parliament and in each of the parliamentary assemblies of the Belgian Regions and Communities may be that the process of ratifying CETA has permanently and definitively failed in the sense of the Council statement of 18 October 2016.

The authorities concerned will evaluate the socioeconomic and environmental effects of CETA's provisional application as far as they are each concerned at regular intervals.

In the event that one of the federated entities should inform the Federal Government of its permanent and definitive decision not to ratify CETA, the Federal Government will notify the Council, no later than one year from the notification by the entity concerned, that Belgium is permanently and definitively unable to ratify CETA. The necessary steps will be taken in accordance with EU procedures.

- B. Belgium has taken note that the provisional application of CETA does not include various provisions of the agreement, in particular those relating to investment protection and dispute resolution (ICS), in accordance with the Council Decision on provisional application of CETA. Moreover, Belgium has noted the right of each party to end the provisional application of CETA in accordance with Article 30.7 of the agreement.

Belgium will ask the European Court of Justice for an opinion on the compatibility of the ICS with the European treaties, in particular in the light of Opinion 1/2014.

Unless their respective parliaments decide otherwise, the Walloon Region, the French Community, the German-speaking Community, the French-speaking Community Commission and the Brussels-Capital Region do not intend to ratify CETA on the basis of the system for resolving disputes between investors and Parties set out in Chapter 8 of CETA, as it stands on the day on which CETA is signed.

The Flemish Region, the Flemish Community and the Brussels-Capital Region welcome in particular the joint statement by the European Commission and the Council of the European Union on the Investment Court System.

- C. The statement from the Council and the Member States regarding decisions of the CETA Joint Committee regarding regulatory cooperation in areas falling within the competence of Member States confirms that such decisions must be taken by common accord by the Council and the Member States.

In that context, the governments of the federated entities indicate that, for matters falling under their exclusive or partial competence within the Belgian constitutional system, they intend to submit any proposals for regulatory cooperation to their Parliament for prior approval and to give notification of any resulting regulatory decision.

- D. The Federal State or federated entity with responsibility for agriculture reserves the right to activate the safeguard clause in the event of a market imbalance, including when such an imbalance is identified for a single product. Specific thresholds will be determined within the 12 months following the signature of CETA determining what is meant by market imbalance. Belgium will defend those thresholds, which will be determined by way of the European decision-making procedure.

Belgium reiterates that CETA will not affect European Union legislation on the authorisation, placing on the market, growing and labelling of GMOs and products obtained by new breeding technologies and in particular on the possibility for a Member State to restrict or prohibit the cultivation of GMOs on its territory. Moreover, Belgium reiterates that CETA will not put at risk the application of the precautionary principle in the European Union, as defined in the Treaty on the Functioning of the European Union, and in particular the precautionary principle as set out in Article 191 and taken into account in Articles 168(1) and 169(1) and (2) TFEU.

Should a request be made concerning the geographical indications (PDO and PGI) of one of the federated entities, the Federal Government undertakes to transmit it to the European Union without delay.

**38. 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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