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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	25 May 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 344 final
Subject:	Proposal for a COUNCIL DECISION on the position to be adopted, on behalf of the European Union, in the CETA Joint Committee established by the Comprehensive Economic and Trade Agreement between Canada, of the one part, and the European Union and its Member States, of the other part, as regards the adoption of the Rules of Procedure for the CETA Joint Committee and specialised committees

Delegations will find attached document COM(2018) 344 final.

Encl.: COM(2018) 344 final



EUROPEAN
COMMISSION

Brussels, 25.5.2018
COM(2018) 344 final

2018/0175 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, in the CETA Joint Committee established by the Comprehensive Economic and Trade Agreement between Canada, of the one part, and the European Union and its Member States, of the other part, as regards the adoption of the Rules of Procedure for the CETA Joint Committee and specialised committees

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

The present proposal concerns the decision establishing the position to be taken on the Union's behalf in the CETA Joint Committee in connection with the envisaged adoption of the Rules of Procedure of the CETA Joint Committee and specialised committees.

2. CONTEXT OF THE PROPOSAL

2.1. The Comprehensive Economic and Trade Agreement (CETA)

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 ('the Agreement') aims to implement the Union's common commercial policy towards Canada and in particular to create a free trade area. The Agreement was signed in Brussels on 30 October 2016.¹

The Agreement is being provisionally applied since 21 September 2017.

2.2. The CETA Joint Committee and specialised committees

The Agreement establishes a CETA Joint Committee under Article 26.1 and specialised committees under Article 26.2. These include: the Committee on Trade in Goods, the Committee on Agriculture, the Committee on Wines and Spirits, the Joint Sectoral Group on Pharmaceuticals, the Committee on Services and Investment, the Joint Committee on Mutual Recognition of Professional Qualifications, the Joint Customs Cooperation Committee, the Joint Management Committee for Sanitary and Phytosanitary Measures, the Committee on Government Procurement, the Financial Services Committee, the Committee on Trade and Sustainable Development, the Regulatory Cooperation Forum and the CETA Committee on Geographical Indications.

The CETA Joint Committee and specialised committees are composed of and co-chaired by representatives of the Parties. The CETA Joint Committee is co-chaired by the Minister for International Trade of Canada and the Member of the European Commission responsible for Trade, or their respective designees. The Parties are defined in Article 1.1 of the Agreement, which provides 'Parties means, on the one hand, the European Union or its Member States or the European Union and its Member States within their respective areas of competence as derived from the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as the 'EU Party') on the one hand, and on the other hand, Canada.'

The CETA Joint Committee and specialised committees are responsible for the implementation and application of the Agreement in their respective areas. Pursuant to Article 26.1.5(h), the CETA Joint Committee may establish further specialised committees and bilateral dialogues in order to assist it in the performance of its tasks. The CETA Joint Committee and specialised committees shall meet once a year, or at the request of a Party.

2.3. The envisaged act of the CETA Joint Committee

The CETA Joint Committee is to adopt a decision regarding the adoption of the Rules of Procedure of the CETA Joint Committee ('the envisaged act').

¹ OJ L11, 14.1.2017, p. 1.

The purpose of the envisaged act is to adopt the rules of procedure of the CETA Joint Committee in line with Article 26.1.4(d) of the Agreement which stipulates that the CETA Joint Committee shall adopt its own rules of procedure.

Article 26.2.4 of the Agreement stipulates that the specialised committees shall set and modify their own rules of procedure, if they deem it appropriate. In view of the high number of specialised committees established under CETA, it is proposed to apply the rules of procedure for the CETA Joint Committee to the specialised committees *mutatis mutandis*, unless otherwise decided pursuant to Article 26.2.4 of the Agreement.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The position to be adopted on behalf of the Union should aim at adopting the Rules of Procedure of the CETA Joint Committee, as provided for by the Agreement.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing ‘the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.’

The concept of ‘acts having legal effects’ includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are ‘capable of decisively influencing the content of the legislation adopted by the EU legislature’².

4.1.2. Application to the present case

The CETA Joint Committee and specialised committees are bodies set up by the Comprehensive Economic and Trade Agreement between the European Union and its Member States, of the one part, and Canada, of the other part (‘the Agreement’).

The decision which the CETA Joint Committee is called upon to adopt is binding and does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

² Judgment of the Court of Justice of 7 October 2014, *Germany v Council*, C-399/12, ECLI, EU, C 2014, 2258, paragraphs 61 to 64.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to the common commercial policy and to international transport.

Therefore, the substantive legal basis of the proposed decision is the Treaty of the Functioning of the European Union, and in particular its articles 91, 100(2) and 207(4).

4.3. Conclusion

The legal basis of the proposed decision should be articles 91, 100(2) and 207(4) TFEU in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

It is envisaged to publish the Decision of the CETA Joint Committee once adopted.

Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, in the CETA Joint Committee established by the Comprehensive Economic and Trade Agreement between Canada, of the one part, and the European Union and its Member States, of the other part, as regards the adoption of the Rules of Procedure for the CETA Joint Committee and specialised committees

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular its Articles 91, 100(2) and 207(4) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Decision (EU) 2017/37³ provides for signing on behalf of the European Union 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 (hereinafter 'the Agreement'). The Agreement was signed on 30 October 2016.
- (2) Council Decision (EU) 2017/38⁴ provides for provisional application of the Agreement, including the establishment of the CETA Joint Committee and specialised committees. The Agreement has been provisionally applied since 21 September 2017.
- (3) Pursuant to Article 26.1.4(d) of the Agreement, the CETA Joint Committee shall adopt its own Rules of Procedure.
- (4) Pursuant to Article 26.2.4 of the Agreement, the specialised committees shall set and modify their own rules of procedures, if they deem it appropriate.
- (5) The CETA Joint Committee, during its first meeting, is to adopt its own Rules of Procedure, as provided for by the Agreement.
- (6) Unless otherwise decided by each specialised committee pursuant to Article 26.2.4, these Rules of Procedure will apply mutatis mutandis to the specialised committees.
- (7) It is therefore appropriate to establish the position to be taken on the Union's behalf in the CETA Joint Committee on the basis of the attached draft decision of the CETA Joint Committee on its Rules of Procedure in order to ensure the effective implementation of the Agreement,

³ OJ L11, 14.1.2017, p. 1.

⁴ OJ L11, 14.1.2017, p. 1080.

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the Union, in the first meeting of the CETA Joint Committee established by 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, as regards the Rules of Procedure for the CETA Joint Committee and specialised committees, shall be based on the draft decision of the CETA Joint Committee attached to this Decision.

Article 2

After its adoption, the Decision of the CETA Joint Committee shall be published in the Official Journal of the European Union.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*