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European Union

Brussels, 10 August 2018  
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## PROPOSAL

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 10 August 2018

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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No. Cion doc.: COM(2018) 580 final

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Subject: Proposal for a COUNCIL DECISION on the position to be adopted, on  
behalf of the European Union in the CETA Committee on Trade and  
Sustainable Development 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, establishing lists of  
individuals willing to serve as panellists under Chapter 23 and Chapter 24  
of the Agreement

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Delegations will find attached document COM(2018) 580 final.

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Encl.: COM(2018) 580 final



Brussels, 10.8.2018  
COM(2018) 580 final

2018/0306 (NLE)

Proposal for a

## **COUNCIL DECISION**

**on the position to be adopted, on behalf of the European Union in the CETA Committee on Trade and Sustainable Development 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, establishing lists of individuals willing to serve as panellists under Chapter 23 and Chapter 24 of the Agreement**

## EXPLANATORY MEMORANDUM

### **1. SUBJECT MATTER OF THE PROPOSAL**

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the CETA Committee on Trade and Sustainable Development in connection with the envisaged adoption of lists of individuals willing to serve as panellists under Chapter 23 and Chapter 24 of the Agreement.

### **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.<sup>1</sup>

The Agreement is being provisionally applied since 21 September 2017.

#### **2.2. The CETA Committee on Trade and Sustainable Development**

The CETA Committee on Trade and Sustainable Development, established under Article 26.2.1(g) of the Agreement, oversees the implementation of Chapters 22 (Trade and Sustainable Development), 23 (Trade and Labour) and 24 (Trade and Environment), including cooperative activities and the review of the impact of this Agreement on sustainable development, and addresses in an integrated manner any matter of common interest to the Parties in relation to the interface between economic development, social development and environmental protection.

#### **2.3. The envisaged act of the CETA Committee on Trade and Sustainable Development**

The CETA Committee on Trade and Sustainable Development in its first meeting after the entry into force of the Agreement is to adopt a decision establishing lists of individuals willing to serve as panellists under Chapter 23 and Chapter 24 of the Agreement ('the envisaged act').

For any matter which may arise under Chapter 23 and Chapter 24 the parties should make every attempt to arrive at a mutually satisfactory resolution via government consultations. However, if a party finds that the matter has not been satisfactorily addressed through government consultations, the Agreement provides for a possibility for a party to request that a Panel of Experts is convened to examine the matter. Article 23.10 of the Agreement provides that the CETA Committee on Trade and Sustainable Development is to establish a list of at least nine individuals who are willing and able to serve as panellists with regard to matters arising under Chapter 23 (Trade and Labour) and who, pursuant to paragraph 7 of Article 23.10, have specialised knowledge or expertise in labour law, other issues addressed in Chapter 23, or in the resolution of disputes arising under international agreements. Accordingly, article 24.15 of the Agreement, provides that the CETA Committee on Trade and Sustainable Development is to establish a list of at least nine individuals who are willing and able to serve as panellists with regard to matters arising under Chapter 24 (Trade and Environment) and who, pursuant to paragraph 7, have specialised knowledge or expertise in

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<sup>1</sup> OJ L11, 14.1.2017, p. 1.

environmental law, issues addressed in Chapter 24, or in the resolution of disputes arising under international agreements. Pursuant to paragraph 6 of Article 23.10 and paragraph 6 of Article 24.15, each list shall consist of at least three individuals named by each Party and at least three individuals named by the Parties who are not nationals of either Party and who are willing and able to serve as chairperson of a Panel of Experts.

The envisaged act establishes both lists i.e. of individuals willing to serve as panellists under Chapter 23 and individuals willing to serve as panellists under Chapter 24 of the Agreement.

The envisaged act will take effect on the date of its adoption by the CETA Committee on Trade and Sustainable Development.

### **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 lists of individuals willing to serve as panellists under Chapter 23 and Chapter 24 of 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’<sup>2</sup>.

##### *4.1.2. Application to the present case*

The CETA Committee on Trade and Sustainable Development is a body set up by an agreement, namely 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 Committee on Trade and Sustainable Development 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

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<sup>2</sup> 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.

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.

#### *4.2.2. Application to the present case*

The main objective and content of the envisaged act relate to the common commercial policy. Therefore, the substantive legal basis of the proposed decision is the Treaty of the Functioning of the European Union, and in particular its Article 207(4).

#### **4.3. Conclusion**

The legal basis of the proposed decision should be Article 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 Committee on Trade and Sustainable Development in the Official Journal of the European Union after its adoption.

Proposal for a

## COUNCIL DECISION

**on the position to be adopted, on behalf of the European Union in the CETA Committee on Trade and Sustainable Development 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, establishing lists of individuals willing to serve as panellists under Chapter 23 and Chapter 24 of the Agreement**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Decision (EU) 2017/37<sup>3</sup> 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) 2017/38<sup>4</sup> 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 26.2.1(g) of the Agreement, the Committee on Trade and Sustainable Development is established.
- (4) The Committee on Trade and Sustainable Development, during its first meeting, is to adopt the envisaged act establishing lists of individuals willing and able to serve as panellists under Chapter 23 (Trade and Labour) and Chapter 24 (Trade and Environment) of the Agreement.
- (5) It is therefore appropriate to establish the position to be taken on the Union's behalf in the CETA Committee on Trade and Sustainable Development, on the basis of the attached draft decision in order to ensure the effective implementation of the Agreement,

HAS ADOPTED THIS DECISION:

### *Article 1*

The position to be adopted, on behalf of the Union, in the first meeting of the CETA Committee on Trade and Sustainable Development 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, establishing lists of individuals willing to

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<sup>3</sup> OJ L 11, 14.1.2017, p. 1.

<sup>4</sup> OJ L 11, 14.1.2017, p. 1080.

serve as panellists under Chapter 23 and Chapter 24 of the Agreement, shall be based on the draft decision of the CETA Committee on Trade and Sustainable Development attached to this Decision.

*Article 2*

After its adoption, the Decision of the CETA Committee on Trade and Sustainable Development 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*