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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 30 November 2010

16689/10

RESTREINT UE

CDN 21

"I/A" ITEM NOTE

From : Council Secretariat
To : COREPER / Council
Subject : Updated Framework Agreement between European Union, its Member States and Canada

Council Decision authorising the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy to negotiate, on behalf of the European Union, the provisions of a Framework Agreement between the European Union and its Member States, of the one part, and Canada, of the other part, that fall within the competence of the European Union

Decision of the Representatives of the Governments of the Member States, meeting within the Council, authorising the European Commission to negotiate, on behalf of the Member States, the provisions of a Framework Agreement between the European Union and its Member States, of the one part, and Canada, of the other part, that fall within the competences of the Member States

1. On 24 September 2010, the Commission submitted to the Council a Recommendation to authorise the Commission to open negotiations for a new and upgraded EU-Canada Framework Agreement to replace the European Community – Canada Framework Agreement of 1976 (doc. 14193/10 RESTREINT UE).

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2. The Working Party on Transatlantic Relations held several discussions on the negotiating directives and two draft decisions during the period from 4 October 2010 to 15 November 2010. At its meeting on 15 November 2010, the Cotra chair concluded to the unanimous support of the 27 Member States on the mixed nature of the envisaged Framework Agreement, as well as on who should lead the negotiating team.
3. On 24 November, the Permanent Representatives Committee reached agreement on two draft decisions and took note of the need to attach to the Council minutes two statements on the negotiating team and one statement on the nature of the agreement.
4. In light of the above, it is suggested that the Permanent Representatives Committee confirm agreement so that the Council may:
 - a) adopt the draft Council Decision authorising the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy to negotiate, on behalf of the European Union, the provisions of a Framework Agreement between the European Union and its Member States, of the one part, and Canada, of the other part, that fall within the competence of the European Union
 - b) adopt the draft Decision of the Representatives of the Governments of the Member States, meeting within the Council, authorising the European Commission to negotiate, on behalf of the Member States, the provisions of a Framework Agreement between the European Union and its Member States, of the one part, and Canada, of the other part, that fall within the competences of the Member Statesas set out in documents 16964/10 and 17037/10, as finalised by the Legal Linguistic experts.
- c) adopt the Negotiating Directives set out in Annex 1.
- d) enter into its minutes the Statements set out in Annex 2.

Negotiating Directives
Upgraded Framework Agreement
between the European Union and its Member States and Canada

A NATURE OF THE AGREEMENT

The EU and Canada have a longstanding co-operative relationship in a wide range of areas, developed under the now outdated 1976 Framework Agreement for Commercial and Economic Cooperation, and subsequent sectoral Agreements.

In the post-Lisbon setting, an upgrade of the EU-Canada relationship has become necessary in the political and other spheres to match parallel efforts on trade and investment. The EU is not just an economic but also a political union. The basis for the relationship should be extended to cover enhanced political dialogue, fields such as justice, freedom and security, economic co-operation not dealt with by ongoing negotiations on a CETA, as well as possible additional areas of common interest.

Shared values are to be expressed concretely through binding political clauses mandated by EU Member States, and applied consistently to all partners. Accordingly, the EU and Canada should project their shared values worldwide in such fundamental areas as human rights, non-proliferation and the fight against terrorism, based on standard clauses suitably adapted for the case of Canada. Given the long-standing, co-operation in these areas with Canada, agreeing to express these fundamental values in a formal agreement should be straightforward.

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The outcome of this negotiation should also clarify the relationship between, on the one hand, the Framework Agreement and, on the other hand, specific sectoral agreements, including the future CETA. An updated Framework Agreement would not replace such sectoral agreements. However, in some cases overlaps may need to be addressed, with a view to removing possible sources of confusion and legal uncertainty, particularly for economic operators. Where relevant, appropriate cross-references shall be inserted. The objective should be to ensure maximum compatibility between all the main existing and future agreements, within a coherent overall framework for the EU's relations with Canada, based on an agreed set of shared values.

The subject matter included in the present negotiating directives includes areas of Union competences as well as areas of member State competence.

The special position of the UK, Ireland and of Denmark in relation to Title V of the TFEU shall be fully respected.

Where relevant, new and updated provisions shall be modelled on those contained in other recent EU agreements of this kind, which will be suitably adapted for the case of Canada.

The structure and legal basis will be determined in light of the outcome of negotiations.

B. PROPOSED CONTENT OF THE AGREEMENT

Preamble

The Preamble of the existing agreement should be expanded to include additional references to:

- Common commitment to the rule of law and good governance and human rights
- sustainable development, environmental protection and cooperation to combat climate change
- cooperation in the field of justice, freedom and security
- customs cooperation

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- the fight against terrorism
- the importance of prosecuting those accused of the most serious crimes of concern to the international community
- common commitment to the fight against proliferation of WMDs
- common commitment to the fight against proliferation of small arms and light weapons

Trade-related references in the Preamble should also be adjusted, and where appropriate simplified, to take account of the expected outcome of negotiations on the CETA.

Basis for cooperation

A provision should be included stipulating that respect for democratic principles and human rights inspire the domestic and international policies of the parties, including the fact that this constitutes an essential element of the agreement. Given the EU's long-standing co-operation in these areas with Canada in multilateral institutions such as the UN (including a long record of co-sponsorship of human rights resolutions for instance on Iran), it should be straightforward to include standard language here.

A provision should be included stipulating that nothing in the framework agreement shall cause prejudice to national or EU laws and regulations regarding public access to official documents.

Aims of cooperation

The current provisions of the Framework Agreement are limited in scope and will be partly superseded by the ongoing CETA negotiations. They should be adjusted and expanded, in particular by incorporating appropriate provisions on:

- Establishing cooperation bilaterally and in all relevant regional and international forums and organisations
- Cooperation in employment, decent work and social affairs
- Developing trade and investment to mutual advantage
- Expanding the illustrative list of sectors for economic cooperation

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- Migration
- Human rights and legal affairs
- Cooperation on non-proliferation of WMDs and SALW
- Cooperation on counter-terrorism and cooperation against transnational crime
- Raising the profile of Canada and the EU in each others' regions
- Promoting people-to-people links and contacts
- Cooperation in health and consumer policy

Political dialogue

A provision should be included referring to Political Dialogue between Canada and the EU.

Cooperation on trade and investment

Trade and trade-related areas of cooperation:

Trade-related provisions of the Framework Agreement should be adjusted to take account of intervening developments. They should be rendered fully consistent with the expected content of the CETA as well as with the Customs Cooperation Agreement. Overlaps should be minimised and the highest possible degree of legal certainty should be ensured.

Economic policy dialogue

Existing provisions should be expanded and adjusted, calling for intensified exchange of information and sharing of experiences on economic trends and policies; and for closer dialogue on economic matters. A reference to the CETA is to be inserted.

Cooperation on justice, freedom and security

A general introductory provision with regard to the rule of law and legal cooperation should be included in this section underlining the importance the Parties attach to the respect of the rule of law and to the respect of fundamental rights in their cooperation.

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Protection of personal data

A provision should be included on the appropriate standards of privacy and data protection in the context of exchanges of all personal information.

Judicial cooperation

A provision should be included stating that judicial cooperation in civil, commercial and criminal matters will be further developed.

Diplomatic and consular protection

A provision should be included specifying the diplomatic/consular protection a Member State may provide to nationals of any other Member State in line with Articles 20 and 23 TFEU.

Illicit drugs

A provision should be included on cooperation in the area of illicit drugs with the aim of reducing demand and supply.

Migration, asylum, visas and border issues

Migration- covering both legal and illegal migration- asylum, integration, border issues and document security (taking into account the standard clause on migration). A provision should be included on ensuring visa free travel between the EU and Canada for both parties' citizens.

Security

Prevention of and fight against transnational organised crime and other illegal activities (such as, but not limited to, trafficking in human beings, drugs trafficking, money laundering and terrorism financing, cyber crime, corruption) terrorism (taking into account the standard clause), including ratification of international anti-terrorism instruments and law enforcement cooperation.

Cooperation in other sectors

The Agreement should cross-reference and seek to expand other areas of co-operation wherever relevant including in areas such as

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- Agriculture and rural development, protection of geographical indications
- Higher education, training and youth
- Customs
- Transport, including Aviation
- Civil society
- Maritime policy and Fisheries
- The Arctic, including in the Northern Dimension Policy
- Crisis management and election observation,
- Multilateral macroeconomic and financial cooperation, public procurement and cooperation in employment, decent work and social affairs, particularly in the G-8 and G-20 context,
- Science & Technology
- Health and consumer protection,
- Civil Protection
- Environment and Climate Change
- Energy, and
- Development assistance: reinforcement of cooperation in multilateral fora, strengthening cooperation in aid effectiveness; and humanitarian aid.

If, in the course of negotiations, areas of further potential cooperation are identified, these will be covered using appropriate and specifically tailored language.

Institutional framework and final provisions:

Institutional linkage

There shall be a clear legal and institutional linkage between the upgraded Framework Agreement and sectoral agreements, for example, the Comprehensive Economic and Trade Agreement and the Agreements on Customs Cooperation, Cooperation in the Peaceful Uses of Atomic Energy and Cooperation in Higher Education and Training. The Framework Agreement shall defer to the sectoral Agreements as necessary and there shall be a coherent institutional framework for the administration of the agreements.

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Bilateral institutions

Provisions should be added as appropriate referring to the main bilateral institutions.

Joint Cooperation Committee

The provisions relating to the role and functioning of the Joint Cooperation Committee should be adjusted to ensure full complementarity with committees established under sectoral agreements, such as the CETA. In particular, the respective roles of the various bodies and their inter-relationship should be clarified and overlaps should be minimised, bearing in mind the commitment to ensure a coherent and efficient institutional framework.

The new Agreement would bring all aspects of the EU-Canada relationship under one roof, removing the split of the annual Joint Cooperation Committee / High Level Coordination Group meetings and replacing them with one comprehensive forum.

Involvement of Canada's Provinces and sub-federal entities

As far as consistent with Canada's constitutional framework, Provinces and other sub-federal entities should be involved as appropriate in view of the implementation of the Agreement as far as matters related to their competences are concerned.

Non-execution of the agreement / Dispute settlement:

The provisions relating to non-execution of the Framework Agreement should be brought into line with those found in other recent EU agreements, in particular by clarifying the role of the Joint Cooperation Committee.

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Statements for the Council Minutes

Statements on the Negotiating Team

1. Commission Statement

The Commission declares that the Vice-President of the Commission with responsibility for external relations will ensure the co-ordination of the negotiations for a Framework Agreement with Canada so far as the Commission is concerned, in accordance with Article 18(4) of the Treaty on European Union.

2. Joint Council and Commission Statement

The Council and the Commission note, with regard to the Framework Agreement with Canada that according to Article 18 (4) TEU, the HR, who is also the Vice-President of the Commission, shall ensure the consistency of the EU's external action. For this purpose, the European External Action Service will support the HR in fulfilling her mandate to conduct the CSFP, as well as in her capacity as Vice-President of the Commission.

Statement on the Nature of the Agreement

3. Joint Council and Commission Statement

With reference to the Negotiating Directives for an upgraded Framework Agreement between the European Union and its Member States and Canada, which start from the presumption that the likely outcome of the negotiations would be a mixed agreement, the Council and the Commission confirm that the final legal nature of the Agreement will be determined at the end of the negotiations on the basis of an analysis of the precise scope of the coverage of the individual provisions.