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'I' ITEM NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee

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Subject: Council Decision on the position to be taken on behalf of the European Union in the CETA Joint Committee established 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 as regards the adoption of a decision on the procedure for the adoption of interpretations in accordance with Articles 8.31.3 and 8.44.3(a) of CETA as Annex to its Rules of Procedure

- Adoption
- Decision to use the written procedure

Unilateral declaration by the Kingdom of Belgium regarding the Council decision on the position to be taken on behalf of the European Union in the CETA Joint Committee established 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 as regards the adoption of a decision on the procedure for the adoption of interpretations in accordance with Articles 8.31.3 and 8.44.3(a) of CETA as Annex to its Rules of Procedure

Belgium reiterates its support to 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.

Belgium welcomes the positive economic effects observed for all parties since its provisional application. Belgium underlines the importance of and values the excellent economic relations between the EU, its Member States and Canada.

Belgium wishes to emphasize the importance of monitoring the implementation of Free Trade Agreements in order to enable citizens and economic operators to fully benefit from the opportunities they offer.

Belgium reaffirms its commitment to the ongoing reform of investment dispute resolution and the shared objective of the European Union and its Member States to achieve the establishment of a multilateral investment court, which shall become the responsible legal institution to resolve conflicts between investors and states. Belgium continues to support the Commission's ongoing efforts in this regard.

Belgium believes that the opinion of the Court of Justice of the EU on the compatibility of ICS (as envisaged in CETA) with EU treaties (Opinion 1/17) has contributed to further clarify the legal framework in which an ICS can be established and paves the way for further work.

Belgium underlines that CETA reaffirms the parties' right to regulate within their territories to achieve legitimate policy objectives. As confirmed by the Court of Justice of the EU in its Opinion 1/17, the ICS Tribunal and Appellate Tribunal have no jurisdiction to call into question the level of protection of public interest determined by a Party following a democratic process.

Belgium recalls that, as stated in the Statement number 36 made by the Commission and the Council at the time of signature of CETA :

- 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 investment court system (ICS) 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.

Belgium restates its commitment to the impartiality of the judges and mediators to be guaranteed by the code of conduct and the transparency of the selection procedures by the Member states.

Belgium recalls that the Joint Interpretative Instrument on CETA 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 and provides an agreed interpretation thereof. 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.

In order to ensure that Tribunals in all circumstances respect the intent of the Parties as set out in CETA, CETA includes provisions that allow Parties to issue binding notes of interpretation (Articles 8.31.3 and 8.44.3(a) of CETA).

In line with the Joint Interpretative Instrument on CETA and the requirement of independence, 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.

Belgium stresses that 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. Belgium also recalls that 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 both parties, notably for workers and for the environment. In this regard, the role of the Trade and Sustainable Committee set up under CETA should be given particular importance.

In this light, Belgium underlines the need to ensure full coherence with this commitment when adopting binding notes of interpretation in accordance with Articles 8.31.3 and 8.44.3(a) of CETA. Belgium recalls that 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 established under Article 22.5 of CETA and in accordance with Article 22.2, in order to express the views of the stakeholders.
