



Council of the
European Union

Brussels, 27 October 2016
(OR. en)

13541/16

LIMITE

WTO 300
SERVICES 28
FDI 23
CDN 24

Interinstitutional Files:

2016/0205 (NLE)

2016/0206 (NLE)

2016/0220 (NLE)

NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

No. prev. doc.: 12865/1/16 REV1 WTO 275 SERVICES 24 FDI 20 CDN 19

Subject: Joint Interpretative Instrument on the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union and its Member States

Delegations will find attached the Joint Interpretative Instrument for endorsement by the Permanent Representatives' Committee, with a view to its approval by the Council, and which will be made at the moment of signature.

**Joint Interpretative Instrument on
the Comprehensive Economic and Trade Agreement (CETA)
between Canada and the European Union and its Member States**

1. Preamble

a) The European Union and its Member States and Canada make the following Joint Interpretative Instrument at the time of signature of the Comprehensive Economic and Trade Agreement (CETA).

b) CETA embodies the shared commitment of Canada and the European Union and its Member States to free and fair trade in a vibrant and forward-looking society. It is a modern and progressive trade agreement which will help boost trade and economic activity, while also promoting and protecting our shared values and perspectives on the role of government in society.

c) CETA creates new opportunities for trade and investment for Europeans and Canadians, its outcome reflects the strength and depth of the EU-Canada relationship, as well as the fundamental values that we cherish. In particular, we wish to recall:

- that integration with the world economy is a source of prosperity for our citizens;
- our strong commitment to free and fair trade, whose benefits must accrue to the broadest sections of our societies;
- that the principal purpose of trade is to increase the well-being of citizens, by supporting jobs and creating sustainable economic growth;
- that Canada and the European Union and its Member States recognise the importance of the right to regulate in the public interest and have reflected it in the Agreement;
- that economic activity must take place within a framework of clear and transparent regulation defined by public authorities.

d) The European Union and its Member States and Canada will therefore continue to have the ability to achieve the legitimate public policy objectives that their democratic institutions set, such as public health, social services, public education, safety, environment, public morals, privacy and data protection and the promotion and protection of cultural diversity. CETA will also not lower our respective standards and regulations related to food safety, product safety, consumer protection, health, environment or labour protection. Imported goods, service suppliers and investors must continue to respect domestic requirements, including rules and regulations. The European Union and its Member States and Canada reaffirm the commitments with respect to precaution that they have undertaken in international agreements.

e) This interpretative instrument, 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.

2. Right to regulate

CETA preserves the ability of the European Union and its Member States and Canada to adopt and apply their own laws and regulations that regulate economic activity in the public interest, to achieve legitimate public policy objectives such as the protection and promotion of public health, social services, public education, safety, the environment, public morals, social or consumer protection, privacy and data protection and the promotion and protection of cultural diversity.

3. Regulatory cooperation

CETA provides Canada and the European Union and its Member States with a platform to facilitate cooperation between their regulatory authorities, with the objective of achieving better quality of regulation and more efficient use of administrative resources. This cooperation will be voluntary: regulatory authorities can cooperate on a voluntary basis but do not have an obligation to do so, or to apply the outcome of their cooperation.

4. Public Services

a) The European Union and its Member States and Canada affirm and recognise the right of governments, at all levels, to provide and support the provision of services that they consider public services including in areas such as public health and education, social services and housing and the collection, purification and distribution of water.

b) CETA does not prevent governments from defining and regulating the provision of these services in the public interest. CETA will not require governments to privatise any service nor prevent governments from expanding the range of services they supply to the public.

c) CETA will not prevent governments from providing public services previously supplied by private service suppliers or from bringing back under public control services that governments had chosen to privatise. CETA does not mean that contracting a public service to private providers makes it irreversibly part of the commercial sector.

5. Social Security or Insurance

Canada and the European Union and its Member States may regulate the provision of public services such as social security and insurance in the public interest. The European Union and its Member States and Canada confirm that compulsory social security and insurance schemes are excluded from the Agreement pursuant to Article 13.2(5) or are exempted from liberalisation obligations of the Agreement on the basis of the reservations the European Union and its Member States and Canada have taken on social and health services.

6. Investment Protection

a) CETA includes modern rules on investment that preserve the right of governments to regulate in the public interest including when such regulations affect a foreign investment, while ensuring a high level of protection for investments and providing for fair and transparent dispute resolution. CETA will not result in foreign investors being treated more favourably than domestic investors. CETA does not privilege recourse to the investment court system set up by the agreement. Investors may choose instead to pursue available recourse in domestic courts.

b) CETA clarifies that governments may change their laws, regardless of whether this may negatively affect an investment or investor's expectations of profits. Furthermore, CETA clarifies that any compensation due to an investor will be based on an objective determination by the Tribunal and will not be greater than the loss suffered by the investor.

c) CETA includes clearly defined investment protection standards, including on fair and equitable treatment and expropriation and provides clear guidance to dispute resolution Tribunals on how these standards should be applied.

d) CETA requires a real economic link with the economies of Canada or the European Union in order for a firm to benefit from the agreement and prevents “shell” or “mail box” companies established in Canada or the European Union by investors of other countries from bringing claims against Canada or the European Union and its Member States. The European Union and Canada are committed to review regularly the content of the obligation to provide fair and equitable treatment, to ensure that it reflects their intentions (including as stated in this Declaration) and that it will not be interpreted in a broader manner than they intended.

e) In order to ensure that Tribunals in all circumstances respect the intent of the Parties as set out in the Agreement, CETA includes provisions that allow Parties to issue binding notes of interpretation. 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.

f) CETA moves decisively away from the traditional approach of investment dispute resolution and establishes independent, impartial and permanent investment Tribunals, inspired by the principles of public judicial systems in the European Union and its Member States and Canada, as well as and international courts such as the International Court of Justice and the European Court of Human Rights. Accordingly, the members of these Tribunals will be individuals qualified for judicial office in their respective countries, and these will be appointed by the European Union and Canada for a fixed term. Cases will be heard by three randomly selected members. Strict ethical rules for these individuals have been set to ensure their independence and impartiality, the absence of conflict of interest, bias or appearance of bias. The European Union and its Member States and Canada have agreed to begin immediately further work on a code of conduct to further ensure the impartiality of the members of the Tribunals, on the method and level of their remuneration and the process for their selection. The common aim is to conclude the work by the entry into force of CETA.

g) CETA is the first agreement to include an Appeal mechanism which will allow the correction of errors and ensure the consistency of the decisions of the Tribunal of first instance.

h) Canada and the European Union and its Member States are committed to monitoring the operation of all these investment rules, to addressing in a timely manner any shortcomings that may emerge and to exploring ways in which to continually improve their operation over time.

i) Therefore, CETA represents an important and radical change in investment rules and dispute resolution. It lays the basis for a multilateral effort to develop further this new approach to investment dispute resolution into a Multilateral Investment Court. The EU and Canada will work expeditiously towards the creation of the Multilateral Investment Court. It should be set up once a minimum critical mass of participants is established, and immediately replace bilateral systems such as the one in CETA, and be fully open to accession by any country that subscribes to the principles underlying the Court.

7. Trade and Sustainable Development

a) 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.

b) Accordingly, CETA includes comprehensive and binding commitments for the protection of workers' rights and the environment. The 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 workers and for the environment.

8. Labour Protection

a) CETA commits Canada and the European Union and its Member States to improving their laws and policies with the goal of providing high levels of labour protection. CETA provides that they cannot relax their labour laws in order to encourage trade or attract investment and, in case of any violation of this commitment, governments can remedy such violations regardless of whether these negatively affect an investment or investor's expectations of profit. CETA does not change the rights of workers to negotiate, conclude and enforce collective agreements and to take collective action.

b) CETA commits the European Union and its Member States and Canada to the ratification and effective implementation of the fundamental Conventions of the International Labour Organisation (ILO). Canada has ratified seven of the fundamental Conventions and has launched the process to ratify the remaining Convention (*Right to Organise and Collective Bargaining Convention, 1949 (C98)*).

c) CETA also creates a framework for Canada and the European Union and its Member States to cooperate on trade-related labour issues of common interest, including through involvement of the ILO and a sustained dialogue with civil society, to ensure that CETA encourages trade in a way that benefits workers and in a manner supportive of labour protection measures.

9. Environmental Protection

a) CETA commits the European Union and its Member States and Canada to provide for and encourage high levels of environmental protection, as well as to strive to continue to improve such laws and policies and their underlying levels of protection.

b) CETA explicitly recognises the right of Canada and of the European Union and its Member States, to set their own environmental priorities, to establish their own levels of environmental protection and to adopt or modify their relevant laws and policies accordingly, mindful of their international obligations, including those set by multilateral environmental agreements. At the same time in CETA the European Union and its Member States and Canada have agreed not to lower levels of environmental protection in order to encourage trade or investment and, in case of any violation of this commitment, governments can remedy such violations regardless of whether these negatively affect an investment or investor's expectations of profit.

c) CETA includes commitments towards the sustainable management of forests, fisheries and aquaculture. It also includes commitments to cooperate on trade-related environmental issues of common interest such as climate change where the implementation of the Paris Agreement will be an important shared responsibility for the European Union and its Member States and Canada.

10. Review and Stakeholder Consultation

a) Commitments related to trade and sustainable development, trade and labour and trade and environment are subject to dedicated and binding assessment and review mechanisms. Canada and the European Union and its Member States are fully committed to make effective use of these mechanisms throughout the life of the agreement. Furthermore, they are committed to initiating an early review of these provisions, including with a view to the effective enforceability of CETA provisions on trade and labour and trade and the environment.

b) Stakeholders, including employers, unions, labour and business organisations and environmental groups, have a key role to play in supporting the effective implementation of CETA. 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.

11. Water

CETA does not oblige Canada or the European Union and its Member States to permit the commercial use of water if they do not wish to do so. CETA fully preserves their ability to decide how to use and protect water sources. Furthermore, CETA will not prevent the reversal of a decision to allow the commercial use of water.

12. Government Procurement

CETA maintains the ability of procuring entities within the European Union and its Member States and Canada, in accordance with their respective legislation, to use environmental, social and labour-related criteria, such as the obligation to comply with and adhere to collective agreements, in procurement tenders. Canada and the European Union and its Member States will be able to use such criteria in their procurement in a way that is not discriminatory and does not constitute an unnecessary obstacle to international trade. They will be able to continue to do so under CETA.

13. Benefits for Small and Medium Sized Enterprises

CETA also provides benefits to small and medium sized enterprises (SME's) for whom trying to meet the cost requirements of customers is a constant challenge. CETA will address this issue by: allowing virtually all manufactured goods to be exported duty-free; reducing processing times at the border and making the movement of goods cheaper, faster, more predictable and efficient; reducing regulatory hurdles, in particular with the possibility to have their products tested and certified to Canadian standards within the EU and vice-versa; facilitating the movement of service providers such as contract suppliers, independent professionals, and short-term business visitors, so that SMEs can more easily meet with clients and offer after-sales servicing; and greatly expanding access to government procurement opportunities for SMEs at the central, sub-central and local government levels. Small farmers will equally benefit by easier access to markets and better selling opportunities, including for distinctive quality products.

14. Preferences for Canada's Aboriginal Peoples

In CETA Canada has included exceptions and carve-outs to ensure its ability to adopt measures that preserve rights and preferences for Aboriginal peoples. Canada is committed to active engagement with Indigenous partners to ensure the ongoing implementation of CETA continues to reflect their interests.

Concordance Table – Joint Interpretative Instrument referenced to CETA text

This table is meant to assist in the interpretation of CETA, by relating the statement of the intention of the Parties in this Instrument with the relevant provisions of CETA. The below list of references is meant to be as complete as possible but is non-exhaustive.

Recital Joint Interpretative Instrument	Reference CETA Text
1. Preamble 1.c) and d)	CETA Preamble, Art. 5.4, Art. 6.1.5, Art. 21.2.1, Art. 21.2.2, Art. 22.1, Art 23.3, Art. 23.4, Art. 24.3, Art. 24.4, Art. 24.5 and Art. 28.3
2. Right to Regulate	CETA Preamble, Art. 5.4, Art. 6.1.5, Art. 8.9, Annex 8-A, Art. 21.2.1, Art. 21.2.2, Art. 22.1, Art. 23.3, Art. 23.4, Art. 24.3, Art. 24.4, Art. 24.5 and Art. 28.3
3. Regulatory Co-operation	Art. 21.2.6
4. Public Services	Art. 8.2.2 (b), Art. 8.9, Art. 8.15, Art. 9.2.2 (a) (b)(f) and (g), Art. 9.7, Art. 13.2.5, Art. 13.10, Art.13.16, Art. 13.17, Art. 28.3, Annex I Reservations and Annex II Reservations
5. Social Security or Insurance	Art. 13.2.5, Art. 13.10, Art. 28.3 Annex I Reservations and Annex II Reservations
6. Investment Protection 6. a) 6. b) 6. c) 6. d) 6. e) 6. f) 6. g) 6. h) 6. i)	Preamble, Art. 8.2.2 (b), Art. 8.36, Art. 8.6, Art. 8.9, Annex 8-A, Art. 8.22.1 (f, g) and Art. 28.3 Art. 8.9.1, 8.12, Annex 8- A and Art. 8.39.3 Art. 8.9, Art. 8.10, Art. 8.11, Art. 8.12 and Annex 8- A Art. 8.1 and Art. 8.18.3, Art 8.31.3 Art. 8.27, Art. 8.28, Art. 8.30 and Art. 8.44 Art. 8.28 Art. 8.31.3 and Art.8.44.3 Art. 8.29
7. b) Trade and Sustainable Development	Art. 22.1, Chapters 23 and 24
8. Labour Protection 8. a) 8. b) 8. c)	Art. 23.2, Art. 23.3.1, Art. 23.4.2, Art. 23.4.3 Art. 23.3.4 Art. 23.7 and Art. 23.8

9. Environmental Protection	
9. a)	Art. 24.3
9. b)	Art. 24.3 and Art. 24.5
9. c)	Art. 24.10, Art. 24.11 and Art. 24.12
10. Review and Stakeholder Consultation	
10. a)	Art. 22.3.3, Art. 22.4, Art. 23.8, Art. 23.9, Art. 23.10 and Art. 23.11
10. b)	Art. 22.1.3, Art. 22.4.3, Art. 22.4.4, Art. 23.6, Art. 23.8.4, Art. 24.13, Art. 24.14, Art. 24.15, Art. 24.16 and Art. 24.7,
11. Water	Art. 1.9
12. Government Procurement	Art. 19.9.6 and Art. 19.3.2
13. Benefits for SME's	Annex 2- A, Chapter 4, Chapter 6, Chapter 19, Chapter 20-subsection C
14. Preferences for Canada's Aboriginal Peoples	Art. 12.2.2 and relevant Canadian reservations
