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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	11 October 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2019) 458 final - ANNEX
Subject:	ANNEX to the Proposal for a 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

Delegations will find attached document COM(2019) 458 final - ANNEX.

Encl.: COM(2019) 458 final - ANNEX

EUROPEAN
COMMISSION

Brussels, 11.10.2019
COM(2019) 458 final

ANNEX

ANNEX

to the

Proposal for a 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

ATTACHMENT

DRAFT

DECISION No […/2019] OF THE CETA JOINT COMMITTEE

of…

adopting a 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

The CETA JOINT COMMITTEE,

Having regard to Article 26.1 of the Comprehensive Economic and Trade Agreement between Canada, of the one part, and the European Union and its Member States, of the other part ("the Agreement"), and in particular Articles 26.1.4(d) and 26.2.4 thereof,

Whereas:

(1) Pursuant to Article 26.1.4(d) of the Agreement, the CETA Joint Committee is to adopt its own rules of procedure.

(2) Pursuant to Article 26.2.1(b) of the Agreement, the Committee on Services and Investment is one of the specialised committees established by the Agreement.

(3) 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.

(4) Rule 14.4 of the Rules of Procedure of the CETA Joint Committee (Decision 001/2018 of the CETA Joint Committee of 26/09/2018) provides that unless otherwise decided by each specialised committee pursuant to Article 26.2.4 of the Agreement, the Rules of Procedure apply *mutatis mutandis* to the specialised committees and other bodies established under the Agreement.

(5) In accordance with Article 8.9.1 of the Agreement, the Parties reaffirm their right to regulate in the public interest to achieve legitimate public policy objectives, such as the protection of public health, safety, the environment, which includes climate change and biodiversity, public morals, social or consumer protection or the promotion and protection of cultural diversity.

(6) In accordance with paragraph 6(e) of the Joint Interpretative Instrument on the Agreement, in order to ensure that the Tribunals established under Section F (Resolution of investment disputes between investors and states) of Chapter Eight (Investment) of the Agreement in all circumstances respect the intent of the Parties as set out in the Agreement, the Agreement includes provisions that allow the Parties to issue binding notes of interpretation and the Parties reaffirm that Canada and the European Union and its Member States are committed to using these provisions to avoid and correct any misinterpretation of the Agreement by the Tribunals.

(7) In accordance with Articles 8.31.3 and 8.44.3(a) of the Agreement, where serious concerns arise as regards matters of interpretation that may affect investment, the Committee on Services and Investment may, on agreement of the Parties, and after completion of their respective internal requirements and procedures, recommend to the CETA Joint Committee the adoption of interpretations of the Agreement; an interpretation adopted by the CETA Joint Committee shall be binding on the Tribunals established under Section F (Resolution of investment disputes between investors and states) of Chapter Eight (Investment) of the Agreement; and the CETA

Joint Committee may decide that an interpretation shall have binding effect from a specific date;

HAS DECIDED AS FOLLOWS:

Article 1

1. The procedure for the adoption of interpretations pursuant to Articles 8.31.3 and 8.44.3(a) of the Agreement, as set out in the Annex to this Decision, is hereby adopted as Annex to the Rules of Procedure of the CETA Joint Committee.

2. The Annex shall form an integral part of the Rules of Procedure of the CETA Joint Committee (Decision 001/2018 of the CETA Joint Committee of 26/09/2018).

Article 2

The Annex shall form an integral part of this Decision.

Article 3

This Decision shall be published and shall enter into force on the date of entry into force of Section F (Resolution of investment disputes between investors and states) of Chapter Eight (Investment) of the Agreement, subject to the Parties' exchange of written notifications, through diplomatic channels, certifying that they have completed the necessary internal requirements and procedures.

Done at …, ….

For the CETA Joint Committee

The Co-Chairs

ANNEX

ANNEX TO THE RULES OF PROCEDURE OF THE CETA JOINT COMMITTEE

1. In any situation where a Party has serious concerns as regards matters of interpretation of the Agreement that may affect investment, including if it has serious concerns related to a specific measure for which a request for consultations has been submitted pursuant to Article 8.19 (Consultations) of the Agreement by an investor of the other Party claiming that such measure breaches an obligation under Chapter Eight (Investment) of the Agreement:

   (a) the Party may refer the matter in writing to the Committee on Services and Investment;

   (b) in case of a referral under paragraph (a), the Parties shall immediately enter into consultations within the Committee on Services and Investment; and

   (c) the Committee on Services and Investment shall decide on the matter as soon as possible.

2. Each Party shall accord due consideration to the representations made by the other Party relating to Article 8.31.3 of the Agreement and shall make best endeavours to address the matter in a timely and mutually satisfactory manner.

3. On agreement of the Parties, and after completion of their respective internal requirements and procedures, the Committee on Services and Investment may recommend to the CETA Joint Committee the adoption of interpretations to be given to relevant provision(s) of Chapter Eight (Investment) of the Agreement. Those interpretations may *inter alia* address the question of whether and under which conditions a certain type of measure is to be considered as compatible with Chapter Eight (Investment) of the Agreement.

4. If the Committee on Services and Investment decides to recommend to the CETA Joint Committee the adoption of an interpretation, the Joint Committee shall adopt a decision on the matter as soon as possible.

5. An interpretation adopted by the CETA Joint Committee shall be binding on the Tribunal and Appellate Tribunal established under Section F (Resolution of investment disputes between investors and states) of Chapter Eight (Investment) of the Agreement. The CETA Joint Committee may decide that an interpretation shall have binding effect from a specific date.

6. Interpretations adopted by the CETA Joint Committee shall be immediately made public and sent to the Parties and to the Presidents of the Tribunal and of the Appellate Tribunal, who shall ensure their communication to the Tribunal and Appellate Tribunal divisions established under Section F (Resolution of investment disputes between investors and states) of Chapter Eight (Investment) of the Agreement.