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NOTE

From:	General Secretariat of the Council
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Subject:	Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part – Statements to the Council minutes

Delegations will find attached the statements to be inserted in the Council minutes at the moment of adoption by the Council of the CETA package.

STATEMENTS:

Statement from the Council on Article 20.12:

The Council declares that the agreement reached by Member States on the criminal enforcement of intellectual property rights will not constitute a precedent for future agreements between the European Union and third countries.

Statement from the Council relevant to the provisional application of Article 20.7:

The Council declares that its decision, to the extent that it provides for provisional application by the EU of article 20.7 does not prejudice the allocation of competences between the EU and the Member States insofar it concerns moral rights protected by the Berne Convention.

Statement from the Council relevant to the provisional application of transport and transport services:

The Council of the European Union declares that its decision, to the extent that it provides for provisional application by the EU of provisions in the field of transport services, falling within the scope of shared competences between the EU and the Member States, does not prejudice the allocation of competences between them in this field and does not prevent the Member States from exercising their competences with Canada for matters not covered by this Agreement, or with another third country in the field of transport services falling within the said scope.

Statement from the Council relevant to the provisional application of Chapters 22, 23 and 24:

The Council of the European Union declares that its decision, to the extent that it provides for provisional application by the EU of provisions in Chapters 22, 23 and 24, falling within the scope of shared competences between the EU and the Member States, does not prejudice the allocation of competences between them in this field and does not prevent the Member States from exercising their competences with Canada for matters not covered by this Agreement, or with another third country.

Statement from the Council on the application of Regulation (EU) No 912/2014:

The Council notes Regulation (EU) No 912/2014 of 23 July 2014 establishing a framework for managing financial responsibility linked to investor-to-state dispute settlement tribunals established by international agreements to which the European Union is party applies to all claims and disputes directed against the EU or any of its member states pursuant to Section F (Resolution of investment disputes between investors and states) of Chapter 8 of CETA.

Commission Declaration in respect of the protection of Geographical Indications:

1. The Commission will, throughout ongoing or future negotiations on geographical indications, maintain close contact with each interested Member State through the available consultative structures and will welcome ad hoc requests for further consultations.
2. The Commission is committed to achieving the best possible level of protection of Union registered geographical indications under ongoing or future negotiations of trade agreements in light of the market situation in each trading partner and the interests of the Member States.

3. The Commission takes note of Greece's concerns as to the results regarding the protection of certain geographical indications 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, in particular in respect of the Protected Designation of Origin Feta.
The Commission recognises that the results achieved regarding the terms covered under CETA Article 20.21, including FETA, provide a level of protection that does not create a precedent for ongoing or future negotiations.
4. The Commission confirms its intention, in view of the CETA agreement, to ensure strict implementation of the protection of geographical indications foreseen in this Agreement, inter alia, of its provisions on administrative enforcement, and regarding entities entitled to use exceptions under Article 20.21.
5. The Commission commits to make full use of the mechanisms of the CETA Committee on Geographical Indications established under Article 26.2 of the Agreement so as to ensure that Canadian consumers are adequately informed about the intrinsic quality and characteristics of the products covered under CETA Article 20.21.
6. The Commission commits within five years at the latest to use the appropriate mechanisms provided within the CETA Agreement, with the aim to achieve for all EU geographical indications listed in Annex 20-A of the Agreement, including Feta, the same level of protection.
7. In view of the possibilities offered under Regulation (EU) No 1144/2014 of the European Parliament and of the Council of 22 October 2014 on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries, the Commission will continue offering Member States as well as geographical indication producers and exporters, especially the most vulnerable among them, support to promote geographical indications.

Commission Declaration in respect of the protection of the precautionary principle in CETA:

The Commission confirms that CETA preserves the ability of the European Union and its Member States to apply their fundamental principles governing regulatory activities. For the European Union, those principles include those established in the Treaty of the European Union and the Treaty on the Functioning of the European Union and include, in particular, the precautionary principle as mentioned in Article 191 and reflected in Articles 168(1), 169(1) and (2) of the Treaty on the Functioning of the European Union.

Consequently the Commission confirms that nothing in CETA prevents the application of the precautionary principle in the European Union as set out in the Treaty on the Functioning of the European Union.

Commission Declaration in respect of water:

The Commission reaffirms that nothing in CETA will interfere with the right of any Member State to decide autonomously how to use and protect its water sources. Article 1.9 in CETA reaffirms that nothing in the Agreement obliges the European Union to permit the commercial use of water for any purpose. CETA would only apply in this sector if the European Union or its Member State autonomously decided to allow the commercial use of water.

Even if a Member State of the European Union does decide to allow a commercial use of water, CETA fully safeguards the possibility for a Member State to reverse its decisions in this regard, as well as the right to regulate the commercial use of water for public policy purposes.

Commission Declaration in respect of the content of the legal bases:

The Commission notes that the Council has added Articles 43 (2), 153 (2) and 192 (1) TFEU to the substantive legal bases proposed by the Commission for the 'Council decision on signature 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 Commission considers that this amendment is unwarranted because all the matters concerned fall entirely within the scope of Article 207 TFEU.

Statement by Ireland:

Should the implementation of the Agreement by the European Union necessitate a recourse to measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, the provisions of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the functioning of the European Union, will be fully respected.

Statement by the United Kingdom:

The United Kingdom welcomes the signature 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.

However, the United Kingdom considers that the Agreement contains provisions related to the temporary presence of natural persons for business and readmissions which are pursuant to Title V of Part III of the Treaty on the Functioning of the Union. The United Kingdom recalls that, in accordance with Article 2 of Protocol (No. 21) to the Treaties on the position of the United Kingdom and Ireland in Respect of the Area of Freedom, Security and Justice, no provision of any international agreement concluded by the Union pursuant to that Title shall be binding upon or applicable in the United Kingdom unless, in accordance with Article 3 of the Protocol, it notifies its intention that it wishes to take part in the adoption and application of a proposed measure.

As a result, in accordance with Article 3 of Protocol (No. 21), the United Kingdom notified the President of the Council that, to the extent that the Decisions relate to the temporary presence of natural persons for business, it intends to take part in the Council Decisions.

Statement by Portugal:

Bearing in mind the compliance with the principle of competence sharing between the European Union and its Member States, as has been defined by the Treaties, the Decisions of the Council authorizing the conclusion, signature and provisional application of Comprehensive Economic and Trade Agreement between Canada, of the one part, and the European Union and its Member States, of the other part, shall not affect the autonomy of Portugal's decisions regarding issues within its national competence, whose decision to be bound by the Agreement, pursuant to the Constitutional principles and rules, depends on the conclusion of the internal ratification procedures and the entry into force of the agreement in the international legal system.

Statement by Greece:

Greece notes that the results achieved under the negotiations for a Comprehensive Economic and Trade Agreement (CETA) between the European Union and its Member States, of one part and Canada, of the other part, on the protection of 'Feta', a Greek cheese entitled to special protection under the EU legislation on Protected Designation of Origin (PDO) products, provide only a minimum level of protection and, as such, do not constitute a precedent for future EU Trade Agreements with third countries.

Greece considers that PDO 'Feta', as one of the major EU geographical indications, should be given the same level of protection as EU GIs of similar importance. Moreover, Greece considers that the protection of PDO 'Feta' as well as of other Geographical Indications substantially contribute to the promotion of regional development, growth and employment within the European Union. The results achieved on the specific protection of PDO 'Feta' under the CETA Agreement completely disregard the above target and thus do not ensure its full protection within the Canadian market.

In this framework, Greece takes fully note of the European Commission's commitment: a) to achieve the best possible level of protection of all EU registered geographical indications (GIs), including PDO 'Feta', under ongoing or future negotiations of Trade Agreements with third countries, taking sufficiently into account the above target and b) to take all measures necessary to protect the PDO 'Feta' not only within the EU, but also in third-countries' markets, notably as regards the use of unfair practices which lead to consumer misinformation.

In this respect, Greece welcomes the European Commission's statement regarding (1) the European Commission's commitment to maintain close contact with the interested Member States throughout ongoing or future negotiations on GIs, (2) its commitment to achieve the best possible level of protection for GIs under ongoing or future negotiations with third countries, (3) its intention to ensure, in cooperation with all competent Canadian authorities, the strict implementation of the protection foreseen under the CETA Agreement, namely the establishment of the proper internal Canadian administrative enforcement mechanisms and procedures in order to adjust the Canadian internal market to CETA provisions, as well as the registration of the Canadian entities entitled to use exceptions under Art 20.21. (4) its commitment to make full use of the mechanisms of the CETA Committee on Geographical Indications so as to ensure that Canadian consumers are adequately informed about the intrinsic quality and characteristics of the products covered under CETA Agreement Art 20.21., (5) its commitment, within five (5) years from the entry into force of the CETA Agreement, to use the appropriate mechanisms, with a view to achieving for all EU GI's therein, including PDO 'Feta', the same level of protection, (6) support Greece in its efforts to promote GIs by exploiting the possibilities offered under Regulation (EU) No 1144/2014.

Greece intends to follow up on the above points and considers them as part of the good faith in the implementation of the CETA Agreement.

In presenting this statement, Greece has taken fully into consideration the strategic political and economic dimension of the CETA Agreement.

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Regarding the scope of provisional application of CETA:

Statement from the Council:

The Council of the European Union confirms that only matters within the scope of EU competence will be subject to provisional application.

Statement from the Council relevant to the provisional application of mutual recognition of professional qualifications:

The Council of the European Union declares that its decision, to the extent that it provides for provisional application by the EU of provisions in the area of mutual recognition of professional qualifications and to the extent that this area falls within the scope of shared competences between the EU and the Member States, does not prejudge the allocation of competences between them in this area and does not prevent the Member States from exercising their competences with Canada or with another third country for matters that would not be covered by this Agreement.

Statement from the Council relevant to the provisional application of protection of workers:

The Council of the European Union declares that its decision, to the extent that it provides for provisional application by the EU of provisions in the area of protection of workers and to the extent that this area falls within the scope of shared competences between the EU and the Member States, does not prejudge the allocation of competences between them in this area and does not prevent the Member States from exercising their competences with Canada or with another third country for matters that would not be covered by this Agreement.

Regarding decisions of the CETA Joint Committee:

Commission declaration:

It is noted that it is unlikely that any decision amending CETA and any binding interpretation of CETA adopted by the CETA Joint Committee will be required in the near future. Therefore the Commission does not intend to make any proposal under Article 218(9) with a view to amending CETA or with a view to adopting a binding interpretation of CETA before completion of the main proceedings before the German Constitutional Court.

Statement from the Council and the Member States:

The Council and the Member States recall that where a decision of the CETA Joint Committee falls within the competence of the Member States the position to be taken by the Union and its Member States within the CETA Joint Committee shall be adopted by common accord.

Regarding the termination of provisional application of CETA:

Statement by Germany and Austria:

Germany and Austria declare that as Parties to CETA they can exercise their rights which derive from Article 30.7(3)(c) of CETA. The necessary steps will be taken in accordance with EU procedures.

Statement from the Council:

If the ratification of CETA fails permanently and definitively because of a ruling of a constitutional court, or following the completion of other constitutional processes and formal notification by the government of the concerned state, provisional application must be and will be terminated. The necessary steps will be taken in accordance with EU procedures.

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Statement by Slovenia:

The Republic of Slovenia, while recalling the highly sensitive nature of the investment chapter, considers that the agreement to sign the CETA does not prejudice the principal position of the Republic of Slovenia on the bilateral investment court system. Considering the various concerns expressed during the negotiations on the investment court system provisions the Republic of Slovenia expects that the investment court system is continually further developed in line with the Joint Interpretative Declaration and the law of the European Union, and that the relevant provisions of CETA are adapted in order to introduce the improvements already before the multilateral investment tribunal and appellate mechanism for the resolution of investment disputes is established.

On the basis of the allocation of competences between the European Union and its Member States under the Treaties, the Decision of the Council that authorises the provisional application of the CETA between the European Union and its Member States, of the one part, and Canada, of the other part, shall not affect the autonomy of the Republic of Slovenia to decide to be bound by it with regard to issues falling within its national competence. That implies that reference in the said Agreement to internal requirements and procedures necessary for its provisional application is to be understood in the case of the Republic of Slovenia as referring to the completion of ratification procedures.

The Republic of Slovenia understands that CETA will not affect the European Union or Canada legislation concerning the authorization, placing on the market, growing and labelling of GMOs and products obtained by new breeding technologies and in particular the possibility of the Member States to restrict or prohibit the growing of GMOs on their territory. Additionally, the Republic of Slovenia understands that nothing in the CETA will prevent the application of the precautionary principle in the European Union as set out in the Treaty on the Functioning of the European Union.

In relation to water, the Republic of Slovenia understands that nothing in this agreement creates any obligation for the European Union and its Member States going beyond the EU legislation or limits the right of each Party to adopt or maintain any measure to manage, protect and preserve its water sources (being for commercial, drinking water, mixed or other use), including the right of each Party to limit or cancel the awarded water rights. The Republic of Slovenia also understands that water sources used for drinking water supply (including water sources used for both drinking water supply and any other use) are not covered by paragraph 3 of Article 1.9.

Statement by Austria:

The Republic of Austria notes that an interinstitutional agreement is being sought to ensure the appropriate involvement of the Member States, through the Council of the European Union, in decisions establishing the positions to be adopted on the Union's behalf in the Joint Committee set up by the Agreement, in accordance with Article 218(9) TFEU. With regard to ensuring the participation of the *Nationalrat* in such decisions, we would refer to Article 23e of the Constitution.

Statement by Poland:

Considering the division of competences between the European Union and its Member States, as defined in the Treaties, it is to be stated that the decisions of the Council authorising the signature, provisional application and conclusion 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, do not affect the autonomy of decision of the Republic of Poland relating to the issues in the scope of national competence, whose decision on concluding the agreement, in accordance with the principles and constitutional provisions, depends on completion of the internal ratification procedures.

The agreement contains a broad definition of 'investment.' To avoid doubts as to the agreed wording of the definition of 'investment', the Republic of Poland declares its understanding that this concept includes into legal protection only 'real' investments. As the 'real' investment, protected under the CETA agreement, the Republic of Poland considers firstly, an investment at the stage of post-establishment, understood as the stage of obtaining by the investor of an administrative decision (final / enforceable, that is, which allows to realise the right granted by the said decision), or other final / enforceable consents, required by law, if such a decision or consent is legally required for the investment. Secondly, such a decision or consent must be performed by the investor. Thirdly, the element to demonstrate that the investment is 'real', to the understanding of the Republic of Poland, is the actual involvement of capital or other funds in the implementation thereof.

CETA introduces the Investment Court System. The Republic of Poland will seek to establish detailed rules for the selection of judges so that the composition of the court reflects the diversity of legal systems in the European Union and takes into account geographical balance among EU Member States. An ideal solution would be selection of a judge with a deep knowledge of the Polish legal system.

The CETA agreement gives to its Parties the right to impose regulations within their territory to achieve legitimate policy objectives. The Republic of Poland declares that it considers as justified, in particular, the regulations to ensure a high level of protection of human life and health, including fair labour law rules/standards, privacy and data protection, a high level of protection for plants and animals, food safety and quality, environment protection and consumer interests protection, including in such sensitive areas as the effective control and the use of genetically modified organisms (GMO). In relation to GMO, the Republic of Poland considers that CETA does not affect existing rules in the EU and guarantees the protection of the EU and Polish markets from unwanted influx of genetically modified products.

The Republic of Poland is convinced that CETA, through elimination of barriers and reduction of trade costs, will bring benefits to broadest groups of our society and to small and medium sized enterprises. While maintaining EU standards, CETA will contribute to improvement of the quality of life of European and Polish citizens.
