

Brussels, 5 October 2016

FINAL DRAFT

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

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

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.

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.

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▲ 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, 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.

This interpretative declaration aims to provide 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. 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.

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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 and the promotion and protection of cultural diversity.

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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.

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Public Services

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 public services including in areas such as public health and education, social services and housing and the collection, purification and distribution of water.

CETA does not prevent governments from 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.

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.

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Investment Protection

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.

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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.

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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.

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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.

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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

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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.

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CETA moves decisively away from the traditional approach of investment dispute resolution and establishes an independent, impartial and permanent investment tribunal. Tribunals.

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The members of the Tribunal these Tribunals will be individuals qualified for judicial office in their respective countries, and these will be appointed by the European Union and Canada

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for a fixed term. Cases will be heard by three randomly selected members of the Tribunal.

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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.

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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.

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The common aim is to conclude the work by the entry into force of CETA.

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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.

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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.

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Therefore, CETA represents an important and radical change in investment rules and dispute resolution that will offer a progressive path forward for future agreements around the world. It lays the basis for a multilateral effort to develop further this new approach to investment dispute resolution into a Multilateral Investment Court.

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Trade and Sustainable Development

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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.

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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.

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Labour Protection

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.

CETA does not change the rights of workers to negotiate, conclude and enforce collective agreements and to take collective action.

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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)*).

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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.

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Environmental Protection

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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.

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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.

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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.

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Review and Stakeholder Consultation

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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.

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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.

Water

CETA ~~will~~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.

Government Procurement

CETA maintains the ability of procuring entities within the European Union and its Member States and Canada, 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.

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.

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