

COUNCIL DECISION (EU) 2017/38**of 28 October 2016****on the provisional application 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**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2), Article 91, Article 100(2), Article 153(2), Article 192(1) and the first subparagraph of Article 207(4), in conjunction with Article 218(5), thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 24 April 2009, the Council authorised the Commission to open negotiations for a Comprehensive Economic and Trade Agreement (CETA) with Canada.
- (2) In accordance with Decision (EU) 2017/37 ⁽¹⁾, 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 ⁽²⁾, (the 'Agreement') was signed on 30 October 2016.
- (3) Article 30.7(3) of the Agreement provides for the possibility of provisional application of the Agreement.
- (4) Parts of the Agreement falling within the competence of the Union may be applied on a provisional basis, pending the completion of the procedures for its conclusion.
- (5) Pursuant to Article 218(7) of the Treaty on the Functioning of the European Union, it is appropriate for the Council to authorise the Commission to approve modifications to Annex 20-A of the Agreement to be adopted by the CETA Joint Committee, as set out in Article 26.1 of the Agreement, on a recommendation by the CETA Committee on Geographical Indications pursuant to Article 20.22 of the Agreement.
- (6) In accordance with Article 30.6(1) of the Agreement, the Agreement does not confer rights or obligations which can be directly invoked before Union or Member State courts or tribunals,

HAS ADOPTED THIS DECISION:

Article 1

1. 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 (the 'Agreement') shall be applied on a provisional basis by the Union as provided for in Article 30.7(3) thereof, pending the completion of the procedures for its conclusion, and subject to the following points:

- (a) only the following provisions of Chapter Eight of the Agreement (Investment) shall be provisionally applied, and only in so far as foreign direct investment is concerned:
 - Articles 8.1 to 8.8;
 - Article 8.13;
 - Article 8.15, with the exception of paragraph 3 thereof; and
 - Article 8.16;

⁽¹⁾ Council Decision (EU) 2017/37 of 28 October 2016 on the signing on behalf of the European Union 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 (see page 1 of this Official Journal).

⁽²⁾ See page 23 of this Official Journal.

- (b) the following provisions of Chapter Thirteen of the Agreement (Financial Services) shall not be provisionally applied in so far as they concern portfolio investment, protection of investment or the resolution of investment disputes between investors and States:
- Paragraphs 3 and 4 of Article 13.2;
 - Article 13.3 and Article 13.4;
 - Article 13.9; and
 - Article 13.21;
- (c) the following provisions of the Agreement shall not be provisionally applied:
- Article 20.12;
 - Article 27.3 and Article 27.4, to the extent that those Articles apply to administrative proceedings, review and appeal at Member State level;
 - Paragraph 7 of Article 28.7;
- (d) the provisional application of Chapters 22, 23 and 24 of the Agreement shall respect the allocation of competences between the Union and the Member States.
2. In order to determine the date of provisional application, the Council shall fix the date by which the notification referred to in Article 30.7(3) of the Agreement is to be sent to Canada.
3. The date from which the Agreement will be provisionally applied will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

Article 2

For the purposes of Article 20.22 of the Agreement, modifications to Annex 20-A of the Agreement through decisions of the CETA Joint Committee shall be approved by the Commission on behalf of the Union.

If an opposition is received in the framework of the examination of geographical indications carried out under paragraph 1 of Article 20.19 of the Agreement, and no agreement can be reached between the interested parties, the Commission shall adopt its position in accordance with the procedure laid down in Article 57(2) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council⁽¹⁾.

Article 3

This Decision shall enter into force on the day of its adoption.

Done at Brussels, 28 October 2016.

For the Council
The President
M. LAJČÁK

⁽¹⁾ Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ L 343, 14.12.2012, p. 1).