



CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW

Monsieur Paul Magnette
Ministre-Président de la Wallonie
Rue Mazy, 25-27
5100 Namur

October 19, 2016

Dear Minister-President Magnette,

On behalf of the Center for International Environmental Law, I would like to thank you for your firm opposition to the conclusion and provisional application of the EU-Canada Comprehensive Economic Trade Agreement (CETA). You are preventing an immediate risk to health and environmental protection in the EU and its Member States.

On Tuesday, 18 October 2016, the Council of the EU was scheduled to approve the provisional applicationⁱ of the majority of CETA provisions, including the chapter on Technical Barriers to Trade (TBT). The CETA TBT chapter goes beyond the obligations of the World Trade Organization's Agreement on TBTs and would constrain progress in EU governance over a wide range of issues, including the protection of health and environment under precautionary-based laws such as REACH, among the world's most ambitious systems to limit our exposure to dangerous substances.

As a preliminary matter, CETA impedes environmental lawmaking by requiring regulators in the EU, upon request by Canada, to provide comprehensive information justifying a new regulation, even when the process of creating the regulation is not yet complete and even if Canada has not asserted that the regulation could have a negative impact on trade.ⁱⁱ CETA also requires that whenever Canada requests recognition of its regulations as equivalent to regulations in the EU, the Commission or a Member State must respond to that request, including a detailed explanation of the reasons for rejecting the equivalency of the measures.ⁱⁱⁱ Finally, CETA requires the Commission and Member States to refrain from making decisions on new technical regulations or conformity assessments before a 60-day comment period has passed, and allows for Canada to request a delay between adoption of the regulation and the date that it becomes effective.^{iv} These obligations are additional burdens that can slow the regulatory process and create new bases for attack through dispute resolution.

Moreover, the EU has accepted a higher level of responsibility for overseeing Member State adherence to these and other CETA commitments by agreeing to take "all necessary measures as may be available" to ensure compliance.^v A failure of EU Member States to abide by these constraints or of the European Commission to enforce them on Member States subjects the EU to the risk of a legal challenge by Canada, even before Member States have the ability to ratify the agreement.

The threat of undue Canadian influence on environmental regulations such as REACH, is real. Canada has previously challenged a number of laws of the EU and its Member States, including REACH. For example between March 2003 and June 2011, Canada has raised concerns about REACH 21 times at the WTO TBT Committee. Most worryingly, Canada has pointedly criticized REACH's precautionary, hazard-based approach, which places a greater, and appropriate, responsibility on industry to investigate and disclose the potentially harmful effects of its products.^{vi}

Other innovative laws to protect health and the environment would also likely fall under the provisions of CETA's TBT chapter and therefore be threatened by this agreement.

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The EU has failed to use CETA as an opportunity to strengthen the ability of the EU and Canada to ensure environmental protection within their borders and instead has accepted new commitments that would weaken the ability of EU and regional governments to protect their citizens from harmful chemicals.

I therefore thank you for opposing the conclusion and provisional application of CETA, thus preventing an immediate risk to health and environmental protection in the EU and its Member States.

Respectfully,

Carroll Muffett
President and CEO

About the Center for International Environmental Law (CIEL) – Founded in 1989, CIEL uses the power of law to protect the environment, promote human rights, and ensure a just and sustainable society. CIEL is dedicated to advocacy in the global public interest through legal counsel, policy research, analysis, education, training, and capacity building.

CC: Cecilia Malmström (EU Commissioner for Trade); François Roux (Belgium, Permanent Representative); Dimiter Tzantchev (Bulgaria, Permanent Representative); Martin Povejsil (Czech Republic, Permanent Representative); Kim Jørgensen (Denmark, Permanent Representative); Reinhard Silberberg (Germany, Permanent Representative); Kaja Tael (Estonia, Permanent Representative); Declan Kelleher (Ireland, Permanent Representative); Andreas Papastavrou (Greece, Permanent Representative); Alfonso Dastis Quecedo (Spain, Permanent Representative); Pierre Sellal (France, Permanent Representative); Mato Škrabalo (Croatia, Permanent Representative); Maurizio Massari (Italy, Permanent Representative); Kornelios S. Korneliou (Cyprus, Permanent Representative); Sanita Pavļuta-Deslandes (Latvia, Permanent Representative); Jovita Neliupšienė (Lithuania, Permanent Representative); Georges Friden (Luxembourg, Permanent Representative); Olivér Várhelyi (Hungary, Permanent Representative); Marlene Bonnici (Malta, Permanent Representative); Pieter De Gooijer (Netherlands, Permanent Representative); Walter Grahammer (Austria, Permanent Representative); Jarosław Starzyk (Poland, Permanent Representative); Nuno Brito (Portugal, Permanent Representative); Luminița Teodora Odobescu (Romania, Permanent Representative); Janez Lenarčič (Slovenia, Permanent Representative); Peter Javorčík (Slovakia, Permanent Representative); Pilvi-Sisko Vierros-Villeneuve (Finland, Permanent Representative); Anders Ahnlid (Sweden, Permanent Representative); Ivan Rogers (United Kingdom, Permanent Representative).

ⁱ **European Commission (2016) Proposal for a COUNCIL DECISION on the provisional application 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.**

ⁱⁱ CETA Art. 4.4.1.

ⁱⁱⁱ *Id.*, Art. 4.4.2.

^{iv} *Id.*, Arts. 4.6.3 & 4.6.7.

^v *Id.*, Art. 1.8.2.

^{vi} *See, e.g.*, Minutes of the Committee on Technical Barriers to Trade Meeting, 21 March 2007, G/TBT/M/41, published on 12 June 2007, pp.10-11.

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