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European Scrutiny Committees (ESC) on CETA

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Dear Chair,

I am writing to confirm receipt of the House of Commons Scrutiny Committee report and comments on the Comprehensive Economic Trade Agreement (CETA) between the EU and Canada. CETA is an important trade agreement for the UK, both in terms of the economic benefit it will bring to British businesses while we remain Members of the EU, and the importance the Agreement may have on our future bilateral trade relations with Canada. Your report raises a number of important questions in relation to CETA, and I note your recommendation of a debate on the floor of the House of Commons to address these. The Government has always been willing to engage with Parliament on trade policy, and I appreciate the need for transparency and scrutiny. In this case, the Parliamentary timetable is such that it would be difficult to schedule a debate ahead of the 18 October extraordinary Council on Foreign Affairs (Trade) where Member States will be required to confirm their agreement to sign CETA. I would, however, certainly welcome the opportunity for a debate ahead of the provisional application of CETA which is expected early next year. In the meantime, I have sought to address in this letter the questions raised in the Committee's report, and I hope the information provided will reassure you that the Government has carried out due diligence on this trade Agreement.

Policy

CETA is expected to come into force provisionally by spring 2017 assuming a positive vote in the European Parliament. The Government has been clear that, while the UK remains a Member of the EU, we will back the EU's trade agenda and participate constructively in decision-making on trade. As such, the Government wants to proceed with provisional application as this will allow UK firms and consumers to benefit whilst we are still in the EU. These benefits will include tariff liberalisation on all non-agricultural products; greatly improved market access for food and drink; greater ability to win procurement contracts at the Federal and sub-national levels of government and strengthened intellectual property protection for the

life sciences products. A brief summary of the benefits that CETA will provide to the UK is given in Annex 1.

The Government supports the inclusion of investment protection provisions in CETA. The final text takes account of key concerns through a number of provisions, for example by including text to narrow the scope for investors to bring investor-state dispute settlement (ISDS) claims by reiterating and clarifying the right of governments to regulate; ensuring transparency in ISDS arbitral tribunal proceedings; precluding offshore companies from bringing ISDS claims; and introducing the “loser pays” principle to discourage speculative claims. To dispel concerns about the impact of CETA on labour standards and the right of governments to regulate and organise public services, the EU and Canada are working towards a new Joint EU-Canada Declaration on CETA at the October EU-Canada Summit.

Competence

The Government always assesses the competence of international trade agreements that the EU seeks to sign and conclude. When the CJEU rules on competence in the EU-Singapore FTA, the Government will consider the ruling and how it should affect the position it takes in the Council on future trade agreements.

Legal analysis identifies a number of provisions within CETA where there are elements of shared but unexercised (by the EU) competence. The most notable of these relate to investment, transport services, intellectual property and sustainable development including aspects of climate change, forestry management and aquaculture.

Provisional Application

The procedure for provisional application is set out under Article 218 of the Treaty on the Functioning of the European Union (TFEU) which allows the Commission to make a proposal for the provisional application of the agreement. The Council may then adopt a decision authorising provisional application which the European Parliament must also consent to. As CETA is a mixed agreement it will be subject to ratification and therefore considered by National Parliaments in the future. EU free trade agreements do not require incorporation in UK law to be provisionally applied.

In the wake of the EU Referendum, we reviewed the balance of our interests in respect to the provisional application of CETA. At the point of writing, no final decision has been taken in Council on which elements of CETA are to be provisionally applied following the vote in the European Parliament next year. However, following robust and constructive discussions, the European Commission has conceded that a number of provisions within CETA do not fall within its exclusive competence and will not be provisionally applied before ratification by national and regional Parliaments. This includes the investment court system of arbitration (ICS). The UK welcomes this commitment as removal of ICS from provisional application was the main ask of the UK Government. The Government will update the Scrutiny Committee when a final decision on provisional application has been agreed by all 28 Member States.

Mode IV Provisions

The Government considers that the UK is not bound by a measure which creates Justice and Home Affairs (JHA) content unless we have opted in pursuant to Protocol 21 to the Treaty on European Union and the Treaty on the Functioning of the European Union. This is considered to be the case irrespective of whether a Title V TFEU legal base has been cited. The Government considers that the opt-in protocol is triggered by the Mode 4 provisions of CETA and, in line with the UK’s practice to date, the UK will assert the opt-in.

Implications for the UK's withdrawal from the European Union

On leaving the EU, the UK will no longer retain access to the trade preferences contained within CETA unless arrangements to do so are put in place as part of our negotiations with the EU. Officials in the Department for International Trade are examining options for the UK to enjoy continued access to its current trade preferences to provide continuity for UK businesses. As you will appreciate, our thinking on the UK's future trading relationship with Canada and other international partners is still at a preliminary stage. Further information will be provided to the Committee as we develop our analysis.

Next steps

Assuming all Member States are ready, the agreement will be signed at the October 27 Canada – EU Summit in Brussels. CETA will then be transmitted to the International Trade Committee (INTA) in the European Parliament, who will hold a vote on the agreement in plenary towards the end of this year or early next. It will then return to the Council for final approval, before provisional application which we expect to take place in spring 2017. Full entry into force will not follow until all 38 of the relevant national and regional parliaments have ratified it.

I hope that this letter has been useful in addressing your questions. I would be very grateful if the Committee agree to clear the proposals so the Government can vote in favour on 18 October.



THE LORD PRICE CVO
Minister of State at the Department for International Trade

Annex 1

EU-Canada Comprehensive Economic and Trade Agreement Benefits for the UK

Economic modelling has estimated an ambitious trade deal would be worth C\$12 billion to the Canadian economy and £1.3bn to the British economy in the long run. Based on the CETA's text, and summary documents prepared by the Canadian Government and European Commission we see the following benefits for British business.

Industrial and Manufactured Goods

- 99.6% of non-agricultural goods tariffs will go to 0% upon entry into force.
- Transition periods exist for ships and automobiles of between 3-7 years depending on the product. This includes a 6.1% tariff on automobiles and tariffs as high as 25% on marine vessels.

Consumer Products

- Tariffs on consumer products will be eliminated upon entry into force
- This includes tariffs of up to 18% on apparel

Food Products

- 92% of tariff lines will go to zero upon entry into force (exclusion of poultry and egg products)
 - This includes tariffs of up to 10% on sugar confectionary products and up to 6% on chocolate confectionary
- The EU will have a total cheese quota of 31,972 tonnes (13,472 tonnes of existing WTO quota plus 16,800 tonnes of cheese and 1,700 of industrial cheese from CETA)

Wines and Spirits

- Full tariff elimination on wines and spirits products (4.92¢/litre gin, 12.28¢/litre vodka, 24.56¢/litre rum)
- Removal of the blending requirement for imported bulk distilled spirits
- Cost of service fees charged by liquor boards will be only be charged on a flat fee basis rather than ad valorem, which penalises higher value products

Procurement

- The CETA offers broad coverage at the Canadian federal, provincial, and municipal level. The general thresholds for procurement include:

	Provinces and Territories (incl municipalities)	Federal	Other Government entities (crown entities, federal and provincial)	Utilities Sector
Goods and Services	200,000 SDR	130,000 SDR	355,000 SDR	400,000 SDR
Construction	5,000,000 SDR	5,000,000 SDR	5,000,000 SDR	5,000,000 SDR

Special provisions are in place for certain sectors. Certain provisions apply to a number of jurisdictions' procurement by energy entities, as well as mass transit in Ontario and Quebec (up to 25% of contract value can be required to be contracted locally). Shipbuilding is excluded also from the CETA's coverage.

Services and Investment

- EU companies will have a higher threshold (C\$1.5bn) for invoking reviews under the Investment Canada Act
- Process to encourage mutual recognition of professional qualifications
- Provisions to cover the temporary entry of service professionals. Some of the highlights include:

	Intra-Company Transferee			Contractual Service Supplier	Independent Professional
	Senior Personnel	Specialist	Graduate Trainee		
Definition	Exercise	Advanced	Possess a	Persons	Persons engaged

	wide latitude in decision making	level of expertise or knowledge of the enterprise's processes and procedures	university degree and temporarily transferred to an enterprise in the territory of the other Party for career development purposes,	employed by an enterprise of one Party which has no establishment in the territory of the other Party with a contract to supply services with a consumer in the latter Party requiring the presence on a temporary basis of its employees in that Party. Must possess a university degree or qualification demonstrating knowledge of an equivalent level.	in the supply of a service and established as self-employed in the territory of a Party who have no establishment in the territory of the other Party and who have a contract to supply services with a consumer in the latter Party requiring their presence on a temporary basis. Must possess a university degree or qualification demonstrating knowledge of an equivalent level.
Length of Stay Permitted	Less of 3 years or length of contract. Possibility of up to 18 months extension	Less of 3 years or length of contract. Possibility of up to 18 months extension	Less of 1 year or length of contract	Up to 12 months	Up to 12 months

NB: There are a number of other sub categories and further detailed provisions which exist within the Temporary Entry chapter. The above is only a high level summary.

Pharmaceutical Intellectual Property Protection

- Canada's period of data protection is now locked in at eight years
- Provisions for lengthening patents by up to two years to compensate for delays caused by regulatory approvals
- Amendments to the patent legal appeal mechanism to place brand names companies on an even footing with generic companies in the event of a patent dispute.

Inward Investment

- Although the CETA provides numerous benefits for British business, the agreement will also help to improve our offer for current and potential inward investors through:
- EU tariff liberalisation on non-agriculture products. Many food products also liberalised with certain sensitive products receiving significantly increased quota amounts
- Locked in access to EU procurement markets
- Locked in access to EU services markets
- Businesses will also benefit from the certainty provided with the temporary entry provisions.