



EUROPEAN COMMISSION

LEGAL SERVICE

Brussels, 13 April 2016
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*Opinion of the Legal Service**

NOTE TO MR JEAN-LUC DEMARTY, DIRECTOR GENERAL, DG TRADE

Subject: CETA - approach to be taken re competence and provisional application

Ref.: Your Note trade.dga2.f.2(2016)1561585 of 29 March 2016

The Legal Service shares DG Trade's view that the material content of the Comprehensive Economic and Trade Agreement with Canada (CETA) is very similar to that of the Free Trade Agreement with Singapore (EUSFTA). In the Opinion 2/15 case, which is still pending before the Court, the Commission has expressed the view that EUSFTA falls in its entirety within the Union's exclusive competence.

[REDACTED]

[REDACTED]

Luis ROMERO REQUENA

c.c.: S. Weyand, M. Petriccione, P. Sandler, R. Schlegelmilch, H. König, S. Gallina,
I. García Bercero, D. Redonnet, S. Ratso, L. Rubinacci, T. Baert, S. Leupold,
C-A. Vasile, J. Lasik, M. Lukas, [REDACTED], [REDACTED], [REDACTED], [REDACTED]
[REDACTED], [REDACTED] (DG TRADE)
U. Woelker, [REDACTED], [REDACTED] (Legal Service)

CETA – EU only or mixed agreement?

1. The Comprehensive Economic and Trade Agreement between the European Union and Canada (CETA) seeks to liberalise and facilitate trade and investment between the Parties in a comprehensive manner. To that effect, CETA provides for the establishment of a free trade area for goods and for services, consistent with Article XXIV of the GATT 1994 and Article V of the GATS, respectively. In addition, CETA includes provisions on investment protection, government procurement and trade related aspects of intellectual property, as well as horizontal chapters on competition, trade and sustainable development, transparency and dispute settlement.
2. The objectives and content of CETA are very similar to those of the Free Trade Agreement with Singapore (EUSFTA). In July 2015 the Commission requested from the Court of Justice an opinion under Article 218(11) TFEU on the competence to conclude EUSFTA (case A – 2/15). Specifically, the Commission raised the following question:

Does the Union have the requisite competence to sign and conclude alone the Free Trade Agreement with Singapore? More specifically,

- *which provisions of the agreement fall within the Union's exclusive competence?;*
- *which provisions of the agreement fall within the Union's shared competence?;*
- and*
- *is there any provision of the agreement that falls within the exclusive competence of the Member States?*

3. The question put to the Court has as its main purpose clarifying the extent and nature (exclusive or shared) of the Union's competence in respect of each of the areas covered by EUSFTA. The Commission has pleaded exclusive competence over all areas, meaning that EUSFTA would legally have to be an "EU only" agreement; [REDACTED] it has however filed an alternative plea for shared competence (see point 4 below in more detail). [REDACTED]

[REDACTED]

4. [REDACTED]

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