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PHIL HOGAN

MEMBER OF THE EUROPEAN COMMISSION

TRADE Dear Minister,

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Following our meeting in Brussels on 30 January 2020, I would like to take the opportunity of this letter to provide more information on the EU-Canada Comprehensive Economic and Trade Agreement (CETA) in light of the ongoing parliamentary debate on the Agreement in the Netherlands.

The EU has had a privileged partnership with Canada for many decades. Canada has an equal commitment to democracy, the rule of law, strong international institutions and open markets. We are working together closely as we confront global challenges on climate change, migration, international peacekeeping, economics and trade. Canada is an important ally in pushing for much needed reforms to address the challenges facing the multilateral trading system, to which we believe that agreements like CETA will contribute.

In economic terms, nearly € 110 billion of goods and services are traded between Canada and the EU each year and direct investments encompass almost € 600 billion. The latest data confirm that the Agreement is contributing to strengthening our economic relationship, delivering both growth and jobs. The significance of CETA exceeds its commercial dimension. CETA is a comprehensive agreement, going beyond the elimination of tariffs or the removal of non-tariff barriers as it aims to foster cooperation and harness the potential of trade to promote an environmental policy conducive to the green transition, the respect of labour standards, gender equality as well as the participation of small businesses in globalisation.

I have noted that certain concerns are being expressed in the ongoing debate on the ratification of CETA. I would therefore, like to provide further information and clarification that could help assuage those concerns and where possible address these concerns.

Firstly, I gather that there is a perceived risk that investment protection clauses embedded in CETA could jeopardise the key role of public authorities to regulate in the public interest, notably in areas such as public housing or energy. To be clear: CETA fully protects the right of state and local authorities to regulate in all fields where public policy objectives are at stake. Legally binding language to this effect is included in both the Agreement and the Joint Interpretative Instrument that the EU, its Member States and Canada adopted at the time of CETA's signature. The Court of Justice of the EU confirmed this in its Opinion 1/17 of April 2019.

The Investment Court System (ICS) established by CETA is a significant reform, and reflects a clear break from the system of private arbitration of Investor to State Dispute Settlement (ISDS), which is part of the thousands of existing bilateral investment treaties, including those of the Netherlands. The new ICS preserves the right to regulate and makes the procedures to resolve



investment disputes fairer and more transparent. It features public courts with qualified judges appointed by public authorities (as opposed to companies), transparent proceedings accessible to civil society who are able to play a role, an appeal mechanism, and a strict code of ethics.

Secondly, I gather that concerns have been raised on the effectiveness of CETA's provisions on trade and sustainable development, in particular due to the lack of monetary or trade sanctions. I would like to emphasise that CETA's rules on environment and labour are solid and anchored in a vast network of underlying international conventions and agreements, including the Paris Agreement on climate change. These provisions are legally binding and enforceable through a dedicated dispute settlement mechanism. Experience shows that sanctions are not proven to be the most effective instrument to address breaches of sustainable development provisions in trade agreements. The EU's renewed approach since 2017, based on wide-ranging, legally binding commitments, strong monitoring, involvement of civil society and peer-to-peer dialogue is showing positive effects. For instance, we observe successful results of these efforts with Vietnam and Peru. Thanks to the CETA negotiations, Canada decided to ratify the ILO core Conventions on Minimum Age to Work and on the Right to Organise and to Collective Bargaining. The on-going TSD dispute settlement proceedings with South Korea also testify to the binding nature of the EU's approach.

Effective implementation of trade and sustainable development provisions is key to the success of trade agreements. The EU and Canada initiated an early review of these CETA provisions soon after its provisional application. An initial assessment does not reveal possible non-compliance with CETA commitments. This does not mean that the approach is cast in stone. In fact, following the review of the EU approach on Trade and Sustainable Development in 2017/2018, we have significantly stepped up our efforts in the implementation of these provisions in our trade agreements. We will continue to monitor and assess the effectiveness of implementation and - should the need arise - consider whether a change in policy is warranted. The robust implementation of EU trade agreements is an important priority and the new Commission has decided to create a new function of EU Chief Trade Enforcement Officer. Dealing with any potential breaches of Trade and Sustainable Development commitments will be at the core of this Officer's mandate.

Thirdly, I understand that stakeholders fear a negative impact of CETA on sensitive agriculture sectors and on food safety. In CETA, the EU has carefully negotiated to protect its most sensitive agricultural products by either excluding them from full liberalisation or by limiting concessions through strict tariff rate quotas and by maintaining the entry price system to protect seasonal production of fruits and vegetables.

Importantly, all agricultural exports from Canada have to fully respect EU food safety legislation and import rules, including on hormones, animal feed and GMOs. While the implementation of EU border controls falls within the competence of the Member States, I am fully convinced that all EU Member States, including the Netherlands, will efficiently enforce compliance of this legislation at its borders. In addition to controls carried out at the border by Member States on third country imports, the Commission will use all the tools at its disposal, including audits, to

ensure full compliance with EU food safety legislation. Finally Member States carry out regular official controls on products in the internal market to verify that products meet EU requirements.

Furthermore the Commission will address with Canada the broader issue of sustainable pesticide use in the production process while respecting EU maximum residue limits for pesticides. This topic will be high on the agenda of EU-Canada Joint Management Committee for Sanitary and PhytoSanitary Measures. In my role as EU co-chair of the CETA Joint Committee, I will follow these discussions with interest in particular as the broader issue of sustainability is at the core of the mandate of this Commission.

Two years since the Agreement's provisional application, the EU (including the Netherlands) has increased its positive trade balance in agriculture with Canada. No import surges, in particular for sensitive products like beef or pork, have been noted (in fact Canada is utilising less than 5% of its tariff free meat quotas). If imbalances in agricultural products should arise in future, the Commission stands ready to adopt necessary measures.

As regards animal welfare, it is important to point out that there are no agreed international trade rules on animal welfare. Practices and legislation can differ according to national or regional circumstances. Both Canada and the EU strive towards a high level of protection of animal welfare and CETA provides for a cooperation mechanism to enhance it. I am fully committed to make optimal use of this mechanism to engage Canada in reaching the highest standards on animal welfare. The topic was on the agenda of the CETA Regulatory Cooperation Forum and we already noted tangible outcomes.

Let me conclude by saying that the EU trade policy is an important source of jobs and prosperity. One in seven jobs in the EU depends on international trade and close to one million depend on our exports to Canada. These numbers are even more significant for an open economy like the Netherlands'. A progressive and comprehensive trade agreement like CETA provides an opportunity for all parties involved to demonstrate that openness and high social standards go hand in hand.

More detailed explanations on the arguments presented in this letter can be found in the annex.

I remain at your disposal for any further information that your Government or the Dutch Parliament may need concerning CETA.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Phil Hogan". The signature is written in a cursive, flowing style.

Phil Hogan

H.E. Ms Sigrid KAAG
Minister for Foreign Trade and Development Cooperation
The Netherlands