EXPLANATORY MEMORANDUM TO

THE EUROPEAN UNION (DEFINITION OF TREATIES) (CANADA TRADE AGREEMENT) ORDER 2018

2018 No.

1. Introduction

This Explanatory Memorandum has been prepared by the Department for International Trade and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Order is intended to specify the Comprehensive Economic and Trade Agreement (CETA) between the European Union (EU) and its Member States, of one part and Canada, on the other part as an EU Treaty by Order in Council in accordance with section 1(3) of the European Communities Act 1972 (ECA). This Free Trade Agreement (FTA) is designed to be a World Trade Organization (WTO) compatible Agreement.

2.2 As CETA is a "mixed agreement" with some elements (as outlined below) of the Agreement falling under shared competence between the EU and EU Member States, it requires ratification by all Member States before it can fully enter into force and become legally binding on the Parties. This is because these elements are an unexercised shared competence where the EU has not yet exercised its competence. The following EU Member States have already notified the European Commission that they have completed the necessary ratification procedures in their country – Czech Republic, Denmark, Estonia, Spain, Croatia, Malta and Portugal.

2.3 The Agreement has been provisionally applied since 21 September 2017. Only those areas of the agreement falling under EU exclusive competence when the Council agreed signature and provisional application are being provisionally applied.

2.4 A number of areas within CETA are of shared competence and are exempted from provisional application, including a large part of the chapter on investment (with those provisions being provisionally applied relating only to foreign direct investment). In particular, the majority of the section on investment protection is not being provisionally applied, including measures relating to dispute settlement and expropriation. Measures relating to investment protection and dispute settlement for financial services are also excluded. In addition, provisions relating to camcording are not being provisionally applied.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 As the Agreement is a "mixed agreement" to which the UK is party, it will need to be specified as an EU Treaty by Order in Council in accordance with section 1(3) of the ECA. The effect of the Order is that the Agreement is conclusively to be regarded as an "EU Treaty" as a matter of law. At this stage, it appears that no new legislation or other implementation is required for the UK. The Treaty will also be laid before Parliament under the provisions for treaty ratification within the Constitutional Reform and Governance Act 2010.

4.2 Specification orders are generally used if it is necessary to subsequently implement obligations in an agreement using s 2(2) ECA powers. Powers of subordinate legislation may be exercised under s 2(2) to, for example, give effect to any obligations falling on the UK under the agreement. Section 2(2) of the ECA can usually only be relied upon if a treaty is specified as an "EU treaty" as per s 1(3). Where the UK is a separate party to an agreement, such as CETA, the agreement will not be considered an "EU Treaty" unless it is specified under s 1(3).

4.3 The parts of mixed agreements in respect of which the EU has exercised its competence form part of EU law and may also give directly effective rights to individuals. The specification of CETA under s 1(3) also means that these directly effective provisions become law in the UK and individuals can rely on them in the UK courts.

4.4 The Agreement will be published in full in a Command Paper.

4.5 At the European level, the Commission has already previously presented a proposal for a Council Decision on conclusion of CETA by the Council of the European Union (EU document 10969/16 published on 6 July 2016).

4.6 This Decision will only be adopted by the Council and the Representatives of Governments of the Member States once all Member States' parliamentary and other domestic procedures for ratification of the Agreement are complete. Only then will the full Agreement enter into force and become legally binding on the Parties.

4.7 As explained above, the CETA provisions that are EU exclusive competence have been provisionally in force since 21 September 2017. This is in line with the process that, if the European Parliament consents and the Council agrees, trade agreements such as CETA, may be provisionally applied before the Member States complete their ratification process.

4.8 Signature of CETA is not subject to any procedure in the European Parliament (Article 218(5) TFEU). The conclusion of CETA is subject to the European Parliament's consent under Article 218 (6)(v) TFEU.

4.9 The Council originally authorised the Commission to open negotiations with Canada with a view to concluding a comprehensive FTA in May 2009. The negotiations were concluded in early August 2014 with a public announcement and publication of the agreed text at an EU-Canada Summit on 26 September 2014.

4.10 Following a thorough legal review of the text and translation into other languages, the Agreement was signed by representatives of Member States on 28 October 2016 and at the 16th EU-Canada summit by the European Commission and the Slovakian Presidency on 30 October 2016. CETA was negotiated, signed and concluded alongside the EU-Canada Strategic Partnership Agreement (SPAD). The SPA deepens

international cooperation in foreign policy, energy and climate and other policy matters and contains clauses which reference CETA.

4.11 The European Parliament gave its consent to CETA on 15 February 2017 and CETA provisionally entered into force on 21 September 2017. Canada ratified CETA on 16 May 2017.

4.12 Article 30.7 of CETA sets out when it enters into force for Parties and becomes legally binding. Article 30.7 provides that CETA enters into force on the first day of the second month following the date the Parties exchange written notifications certifying that they have completed their respective internal requirements and procedures or on such other date as the Parties may agree. The Order will enter into force for the UK when the Parties fulfil Article 30.7 and CETA enters into force.

4.13 Explanatory Memoranda on the Signing, Conclusion and Provisional Application and of CETA (10968/16, 10970/16 and 10969/16) were cleared from scrutiny by the House of Commons European Scrutiny Committee on 6 February 2017 following debate in Committee and by the House of Lords Select Committee on the European Union on 13 October 2016. To note that the Government overrode scrutiny at the moment of the agreement by the Council to signature and provisional application of CETA on 28 October 2016.

5. Extent and Territorial Application

5.1 The extent of this instrument is the whole of the United Kingdom.

5.2 The territorial application of this instrument is the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister for Trade Policy at the Department for International Trade has made the following statement regarding Human Rights:

"In my view the provisions of the European Union (Definition of Treaties) (Canada Trade Agreement) Order 2018 are compatible with the Convention of rights".

7. Policy background

What is being done and why

7.1 The principal effect of declaring CETA to be an EU Treaty is that s 2(2) of the ECA (which provide for the general implementation of EU Treaties) may be exercised in relation to CETA. This allows, for example, measures, such as statutory instruments, to be passed under section 2(2) if needed for the UK to implement CETA.

7.2 In 2016, trade between the UK and Canada totalled £15.4bn in goods and services. UK exports to Canada were £8.3 billion and imports from Canada were £7.1 billion in 2016. Canada was the UK's 16th largest export destination in 2016. The UK was Canada's third largest export destination in goods in 2016 and second largest export destination in services in 2015.

7.3 The objective of CETA is to promote bilateral trade and increase economic growth by reducing tariff and non-tariff barriers that businesses face when trading goods and services and investing between the EU and Canada. CETA will enable UK firms to export and import at a lower cost and give more opportunity for UK businesses to bid for public procurement contracts in Canada. CETA will also increase the welfare of

UK households by lowering the price of final goods and services and will increase consumer choice due to greater competition.

7.4 CETA will facilitate trade between the EU and Canada, and help to create new opportunities for both EU and UK businesses in important sectors including, agriculture, food and drink, and life sciences.

7.5 CETA will create new trade and investment opportunities and help to boost growth. It is estimated that CETA will bring around £730 million of benefits in terms of net GDP in the long run to the UK per year. Further benefits are highlighted in impact section below.

7.6 The Agreement includes a wide range of provisions including improved market access for goods, services, investment and government procurement, and measures on intellectual property rights, sanitary and phytosanitary measures, sustainable development, regulatory co-operation, and mutual recognition of professional qualifications.

7.7 The provisional application of CETA removed 98% of the duties UK companies currently have to pay at Canadian customs making it easier and cheaper for UK companies to trade in Canada. Other benefits for UK companies include: more opportunities to bid for public contracts in Canada; easier access to Canadian services and investment markets; an improved framework for temporary movement of key company personnel and service-providers between the UK and Canada; easier access for UK engineers, accountants, architects, and other professionals to provide their services in Canada; and a strengthened Canadian intellectual property environment and patent protection for pharmaceutical products.

7.8 CETA is expected to boost investment and trade flows as it removes tariff and non-tariff barriers and the sectors potentially benefitting include: food, including dairy exports and process foods; motor vehicles; chemical production; and services (financial, insurance, recreational and other services).

7.9 The Agreement presented in this Order represents the outcome of the CETA negotiations undertaken by the European Commission (acting on behalf of the European Union and its Member States) with Canada. The Agreement is based on the negotiating directives approved by the Council of the European Union in May 2009 and also takes account of a modification made in 2011 to the negotiating directives to include investment protection.

7.10 The European Parliament actively monitored the negotiations and communicated its opinions throughout the negotiations, which started prior to the Treaty of Lisbon. This Treaty extended the European Parliament's involvement in relation to the EU's Common Commercial Policy. The European Parliament's concerns relating to investment were addressed by changes to the previous investor state dispute settlement mechanism to replace it by provisions creating a proposed new Investment Court System (ICS).

7.11 The UK Government is very supportive of CETA and is fully committed to supporting this and other EU agreements whilst we remain an EU Member State. The UK Government is committed to seeking continuity in its current trade and investment relationships post exit, including those covered by EU FTAs or other EU preferential arrangements.

7.12 The Prime Ministers of the UK and Canada have made clear their intention to seek to swiftly and seamlessly transition CETA into a UK-Canada deal as the UK leaves the EU and have formally announced a Post-Brexit Working Group as the mechanism through which to take this forward.

7.13 The UK and European Commission negotiating teams have agreed, and reflected in the draft Withdrawal Agreement, that the UK is to be treated as a Member State for the purposes of international agreements during the Implementation Period. The EU will formally notify other parties of this approach in due course. We will be engaging with Canada and other partners to ensure that trade with them will not be disrupted on the day of leaving the EU.

Consolidation

7.14 This Order does not amend another instrument and so does not create the need for a consolidated text.

8. Consultation outcome

8.1 The European Commission consulted with interested parties, including the governments of Member States and representatives of industry and civil society during its CETA preparations, drafting and negotiations.

8.2 Throughout the CETA negotiations, the UK Government (including the Department for International Trade's predecessor department the Department for Business, Innovation and Skills (BIS)), has actively engaged and consulted with representatives from business and civil society organisations.

8.3 The Devolved Administrations were informed and consulted via the circulation of Explanatory Memoranda. We also wrote to update each of the DAs after signature of the final agreement.

8.4 We are also consulting separately with the Crown Dependencies and Gibraltar on relevant aspects of CETA.

8.5 The Parliamentary Scrutiny and Select Committees were consulted on the proposals relating to signature, provisional application and conclusion of CETA.

8.6 No consultations were required for the drafting of the Order itself.

9. Guidance

9.1 This Agreement does not lead to any new regulatory measures and therefore there is no need for new regulatory guidance.

9.2 The Department for International Trade has worked with stakeholders and is providing new guidance on the GOV.UK website, sector specific promotion material, activities across the UK by the network of international trade advisers who focus primarily on small and micro enterprises, stakeholder meetings, and a series of CETA implementation events around the UK promoting the opportunities CETA provides and how the Department can help businesses take advantage of these.

9.3 HMRC has also updated its GOV.UK guidance at the start of provisional application, which includes Customs Information Papers for businesses highlighting the introduction of CETA, its benefits and preferential arrangements.

10. Impact

10.1 The impact on business, charities or voluntary bodies is expected to be beneficial, in particular, to UK businesses who will directly benefit from reduced tariff and regulatory barriers in terms of monetised and non-monetised impacts. Analysis from the European Commission shows EU businesses could save up to €590 million (£518 million) a year from elimination of tariffs. We estimate that the UK proportion of these savings to range between £64 million and £90 million.

10.2 CETA is expected to increase UK exports in goods and services across several business sectors. The sectors which are expected to benefit the most are the motor vehicle and financial services sectors where the UK's total world exports are expected to increase by £280 million and £70 million respectively. At the same time, CETA reduces the cost of UK businesses importing goods and services from Canada, resulting in higher profits or lower consumer prices. The sectors expected to see the biggest increase in total imports from Canada are non-ferrous metals (£80 million) and processed foods (£65 million) due to the elimination of tariffs. The specific figures should not be treated as a forecast, but the results provide a useful indication of the plausible magnitude of impacts and also indication of those sectors where impacts might be greatest.

10.3 Business, charities and voluntary bodies will all benefit from the establishment of a framework for the mutual recognition of professional qualifications. CETA also removes a number of limitations on citizenship and residency conditions for workers allowing businesses greater flexibility in managing their workforce.

10.4 The impact on the public sector is in the area of public procurement. CETA will increase the ability of Canadian businesses to bid for UK public contracts. An increase in competition for UK public contracts may lead to better value for money options for UK public procurement.

10.5 However, CETA includes EU-wide reservations allowing Member States to impose a public monopoly over services considered as public utilities, a reservation allowing Member States to take such measures as they see fit concerning publicly-funded health services and an exception which ensures that government procurement of health services is outside the scope of the agreement. EU-wide reservations allow Member States to introduce or re-introduce more trade restrictive policy measures in future if desirable.

10.6 The Department for International Trade has, in line with current better regulation policy, prepared an economic impact assessment of the costs and benefits associated with ratification of CETA. An Impact Assessment is submitted with this Memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

10.7 The Agreement reduces tariff and non-tariff barriers. Provisional application removed around 98% of tariffs on industrial products exported between the EU and Canada. Most of the remaining tariffs reduce to zero over three to seven years. Additionally, benefits include improved market access for food and drink, increased access to bid for procurement contracts at federal and sub-national levels of government, increased opportunities in the services sector, reduced duplication of conformity assessment procedures, and strengthened intellectual property protection for the life sciences industry. CETA will also positively impact on labour mobility with a streamlined

process to facilitate the recognition of professional qualifications and temporary entry for service professionals.

10.8 The CETA ratification Impact Assessment shows that CETA presents a potential overall benefit with an increase to UK annual net GDP of around £730million (0.03%).

10.9 The increase in GDP is associated with £530 - £670 million (4.3% - 5.4%) net increase in UK exports to Canada from the elimination of most tariffs and reductions in Non Tariff Measures (NTMs); £1.1 billion (6%) net increase in UK imports from Canada from the elimination of most tariffs and reductions in NTMs; £900 million net increase in UK production from higher UK real income.

10.10 Alongside these benefits we expect a £300 - 400 million (0.01% - 0.02%) increase in UK consumer welfare from an increase in real income.

11. Regulating Small Business

11.1 The legislation applies to activities that are undertaken by small businesses. CETA will not lead to any new regulatory measures and so there are no new regulatory impact burdens on small business. The CETA ratification Impact Assessment includes a Small and Micro Business Assessment (SaMBA) noting that small businesses can choose to trade under CETA preferences when the benefits of doing so outweigh the costs, and that the Agreement contains burden reducing measures, including the reduced administrative burden for small exports, which might be of particular benefit to smaller firms.

11.2 The CETA provisions on conformity assessment which potentially reduce the cost of product testing and certification for exporters might also be of particular benefit for smaller businesses, for whom these burdens can be more onerous.

12. Monitoring and Review

12.1 There are no review provisions in the Order.

13. Contact

13.1 Any queries regarding the Order can be directed to Edwina Osborne in the Trade Policy Group in the Department for International Trade. Her contact details are as follows:

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