

MEMBERS OF PARLIAMENT

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Letter of concern regarding CETA, mixity and provisional application

The Council of the European Union

The President of the European Council, Mr. Donald Tusk, and

The President of the Council meeting for Foreign Affairs / Trade Issues,
Ms. Lilianne Ploumen, Minister for Foreign Trade
and Development Cooperation of the Netherlands

The Commission of the European Union

Commissioner Cecilia Malmström

The Hague, 14 June 2016

Dear president Tusk, dear commissioner Malmström, dear minister Ploumen,

Members of national parliaments of the EU have been following with great interest the negotiations on the Comprehensive Economic Trade Agreement (CETA) between the EU and Canada. We understand that the legal "scrubbing" has been completed and that the Council of the European Union discussed a draft text in its Foreign Affairs Council on Trade Issues on 13 May 2016.

We also understand that the European Commission confirmed its intention to submit a proposal to the Council in June 2016 for the signature of CETA, and put forward its view on whether or not the EC considers the legal nature of the agreement text of a mixed EU and Member States competence. Furthermore, the Council might be asked to approve provisional application of (parts of) the agreement.

We would like to point out that two years ago twenty national chambers of parliament from EU member states expressed their view to the European Commission that the legal nature of CETA should be considered as a mixed agreement, since it contains provisions that concern policy areas, such as certain elements of services, transport and investor protection, which are within the competences of member states.

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Concerns CETA, mixity and provisional application

The chambers emphasized that they attach great importance that comprehensive trade agreements, such as CETA, are ratified by the national parliaments. To which the Commission has replied that they can only propose the nature of the text to the Council when the text is final, and that the Council decides how to sign the agreement. The Council, after its recent meeting of 13 May, emphasized a view shared amongst ministers that CETA is of mixed EU and member state competence and should be signed and concluded as such. We want to reiterate that we are of that same view.

As the new type of deep and comprehensive free trade agreements are not just any FTAs, but highly political agreements, we see a heated debate on which articles fall under whose competences in the EU treaties. Especially since these deep and comprehensive agreements are aimed to target 'behind the border regulations', i.e. European and national regulations. And regulatory cooperation and investment protection, including investor-state dispute settlement mechanisms, may be in the interest of (some) foreign investors, but they may also affect EU and national law.

An opinion of the European Court of Justice about the legal nature of a draft free trade agreement with Singapore will be relevant for determining which parts of CETA fall within the EU's competence and which parts must be considered the competence of member states. The Court's opinion has been requested by the Commission and is not expected before 2017. Beforehand it will be very hard to determine what parts are EU-only, without entering into a sensitive and politicized debate.

Furthermore, the European Commission has been unable to answer questions from the European Parliament and others to specify when provisional application ends if the treaty is not ratified by all member states. This question became relevant after the Dutch no-vote in the referendum on the EU/Ukraine Association Treaty.

For these reasons we ask the Commission and the Council to desist from provisional application of all parts of the Comprehensive Economic Trade Agreement with Canada for which there could be any doubt regarding the exclusive competence of the European Union. Furthermore we would like to receive a legal clarification of how long and under which circumstances the EU has the competence to provisionally apply a treaty, especially if one of its member states decides not to ratify that treaty.

We look forward to your reaction and would appreciate receiving that reply well before the Council takes a decision on either of the addressed issues.

Yours Sincerely,

Tuur Elzinga (SP)
Member of the Eerste Kamer of the Dutch Parliament

Pieter Omtzigt (CDA)
Member of the Tweede Kamer of the Dutch Parliament

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Signed, , (Place)

June 2016,

Name

Signature

Chamber

Country