

**DR. KATHERINE M. SIMPSON**  
ARBITRATOR

15 January 2020

Via Email

Secretariat of the CETA Joint Committee:

Commissioner Phil Hogan  
Rue de la Loi  
Wetsstraat 200  
1049 Brussels  
Belgium  
[renita.bhaskar@ec.europa.eu](mailto:renita.bhaskar@ec.europa.eu);  
[colin.brown@ec.europa.eu](mailto:colin.brown@ec.europa.eu);  
[emmy.korodima@ec.europa.eu](mailto:emmy.korodima@ec.europa.eu);  
[cab-hogan-contact@ec.europa.eu](mailto:cab-hogan-contact@ec.europa.eu)

The Hon. Mary Ng  
House of Commons  
Ottawa, ON  
K1A 0A6  
Canada  
[Mary.Ng@parl.gc.ca](mailto:Mary.Ng@parl.gc.ca);  
[andre francois.giroux@international.gc.ca](mailto:andre francois.giroux@international.gc.ca)

**Subject: CETA – Where are the Women?  
Council Decision (EU) 2019/2246 List of Arbitrators**

Dear CETA Joint Committee,

My name is Katherine Simpson and I am an arbitrator with an international investment and commercial arbitration practice in the U.S. and the U.K. (33 Bedford Row Chambers). I am writing to provide a list of women with “*specialised knowledge of international trade law*”, in response to the CETA Article 29 List of Arbitrators (“CETA List”) approved in Council Decision (EU) 2019/2246 of 19 December 2019, where 50% of the Canadian, 20% of the EU, and 0% of the Chairpersons sub-list appointees were female.

**Executive Summary**

The Treaty Parties can correct the gender imbalance in the CETA List by adding women to it. Women account for only 12.9% of all EU sub-list appointments since 2011. Adding qualified women to the CETA and other lists would be an essential step toward rectifying the EU’s historic non- or under-appointment of women to such lists.

Treaty-based lists of arbitrators affect economic opportunities across industries, and the failure to include equally qualified and highly credentialed women on these lists perpetuates inequality. To assist the CETA Joint Committee in creating a List of Arbitrators that reflects the Parties’ commitments to gender parity, I have prepared the attached list of women with “*specialised knowledge of international trade law*”, as understood in the CETA.

**I. The Treaty Parties Have Committed to Gender Equality**

Although the CETA’s only reference to gender is in Article 8.10, where it is described as a “*manifestly wrongful ground*[]” on which to discriminate, the CETA Joint Committee has recognized that the Treaty Parties must act to ensure the equal treatment of men and women in international trade. In its Recommendation 002/2018 (26 September 2018), the CETA Joint Committee recommended “*that the Parties cooperate to improve the capacity and conditions for women ... to access and fully benefit*

---

SIMPSON DISPUTE RESOLUTION

122 Carriage Way  
Ypsilanti, MI 48197

1

+1 301 741 5399  
www.simpsonadr.net

---

[simpson@simpsonadr.net](mailto:simpson@simpsonadr.net)

**DR. KATHERINE M. SIMPSON**  
ARBITRATOR

*from the opportunities created by the CETA. ... Such cooperation activities will be carried out with the inclusive participation of women.*” In April 2019, the Treaty Parties co-hosted a workshop where they recognized that “*an inclusive policy that supports women*” must be institutionalized in trade policy, including the CETA. The Treaty Parties agreed that “*targets for women in leadership roles ... can address the structural and implicit biases that reduce the equal participation of women in trade.*” The European Commission devoted an entire session to “*the first-ever study analyzing barriers for women who work in international trade in the European Union and beyond*” at its 30 September 2019 TRADE FOR HER Empowering Women Through International Trade Conference.

Despite these welcome commitments, the CETA List preserves the same gender imbalances and prejudices that the CETA Parties have publicly sought to eliminate. Amending the CETA List by adding women could rectify this.

**II. EU Treaty Practice: 12.9% of Appointments are Female (10.6% since 2015)**

In response to my concern about gender imbalance in the CETA List, Mr. Colin Brown of the European Commission explained that the EU “*is just beginning to use the bilateral dispute settlement mechanism in EU agreements*” and that it is “*gradually building [its] practice of state-to-state bilateral dispute settlement.*” (Annex IV).

It is a positive development that the European Commission will address gender imbalance, albeit “*in the future.*” The gender imbalance in the CETA List, however, was not an isolated event. Of the twelve (12) EU sub-lists of arbitrators established under international trade agreements since 2011, **66% have included no women.** Further, only **eight (8) of the sixty-two (62) appointments** to an EU sub-list have been female (**12.9%**). Since 2014, those appointments have gone to only two (2) women, and only one woman has been appointed on 75% of all Chairpersons lists. (Annex III). While the appointment of women supports efforts toward parity, the exclusive and repeated appointments of a small number of people is detrimental to diversity and the better results that diverse teams produce. To restate from Commission President Von der Leyen’s campaign, innovation happens when different people from different backgrounds and perspectives blend and work together.

**III. The Appointment of All and Mostly-Male Lists of Arbitrators Perpetuates Inequality**

One could conclude that the EU’s admitted “*[reliance] on arbitrators included in rosters already in place in other free trade agreements*” in place of an objective search for candidates hindered the EU in its attempt to appoint women to the CETA List. Such a conclusion would be consistent with European Parliament’s 2017 findings that “*the persistence of gender stereotypes, including gender bias (often conscious) in recruitment, selection and promotion processes*” and “*a lack of transparency in appointment and promotion processes*” are barriers to the realization of gender equality across Europe. They are also barriers to women’s equality in international dispute resolution.

Every treaty-based list of arbitrators serves as public verification of the listed persons’ credentials and integrity, backed by public accountability. The credence paid to these listings is enormous: disputing parties, academic institutions, governments, and even the EU itself rely on these lists when making appointments. Requiring gender parity in treaty-based lists of arbitrators could be the quickest and most effective step toward achieving gender parity in international dispute resolution. The failure to

**DR. KATHERINE M. SIMPSON**  
ARBITRATOR

nominate equally qualified and highly credentialed women to treaty lists of arbitrators, however, perpetuates inequality.

**IV. Gender Parity Promotes Equality and is Within Reach: Appoint Women**

Given the Treaty Parties' commitments to equality and the importance of these listings for appointing bodies and for those listed, must correction wait?

There are no legal barriers toward the Treaty Parties remedying the gender imbalance they created in the CETA List. Article 29 of the CETA sets fifteen (15) as the minimum number of Arbitrators and gives the CETA Joint Committee the flexibility to review and **add arbitrators to the CETA List, until gender parity is achieved.** To assist in that, I have prepared attached lists of arbitrators whose credentials are an approximate match to the current CETA Arbitrators.

Attached to this letter please find:

- Annex I: Women with “Specialised Knowledge of International Trade Law” (Referenced to Current CETA List)**
- Annex II: Women with “Specialised Knowledge of International Trade Law” (Alphabetical)**
- Annex III: Analysis of EU Historic Appointments to Lists of Arbitrators**
- Annex IV: Email from European Commission (Mr. Colin BROWN) dated 9 January 2020**

For completeness, I confirm that I have neither sought nor received any compensation for any part of this response to Council Decision (EU) 2019/2246. All of the women referenced in this report were discovered via gender-neutral web-based searches for “*international trade law*” and colleague recommendation. No woman nominated herself for inclusion in this list. I have not knowingly received advice from any Government. Finally, I assume no liability for any accident or error contained in this response. Nothing in this letter should be construed as legal advice or replace the reader's own research. One should conduct one's own research into each candidate one intends to appoint to a dispute or a list of arbitrators.

Thank you for your commitment to gender equality. I remain at your disposal should you have any questions regarding this response or if I can be of any further assistance.

Sincerely,



---

Dr. Katherine Simpson, FCI Arb  
International Arbitrator  
Simpson Dispute Resolution

Enclosures

---

SIMPSON DISPUTE RESOLUTION

122 Carriage Way  
Ypsilanti, MI 48197

3

+1 301 741 5399  
www.simpsonadr.net

---

[simpson@simpsonadr.net](mailto:simpson@simpsonadr.net)