

DR. KATHERINE M. SIMPSON
ARBITRATOR

17 January 2020

Via Email to Council of the European Union, POLCOM
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Copied to: recipients of 15 January 2020 Response to CETA Joint Committee

Copied to: Women with Specialized Knowledge of International Trade, listed herein

**Subject: CETA – Where are the Women?
Council Decision (EU) 2019/2246, CETA List of Arbitrators
Proposals for Council Decision, CETA List of Arbitrators (2020, pending)**

Dear Council for the European Union (POLCOM),
To Whom It May Concern,

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 see that the matter of the CETA Joint Committee’s List of Arbitrators (“CETA List”), which was approved in Council Decision (EU) 2019/2246 of 19 December 2019 and was re-submitted on 8 and 9 January 2020 to the Council of the European Union, is still pending. Women are under-represented on this and all other Lists of Arbitrators approved by the Council of the European Union to date. In response, I would like to provide this a list of women with “*specialised knowledge of international trade law*”, whose credentials and experience closely approximate those of the current CETA Arbitrators.

Executive Summary

Women account for only 12.9% of all EU arbitrator sub-list appointments since 2011 (and only 10.6% of all appointments since 2015). 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. The European Union is ideally placed to support and further gender equality by naming additional women to its lists. To assist in the that search, 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 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 ...*

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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 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). Nonetheless, this List was re-submitted to the Council for the European Union on 8 January 2020.

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

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

Given the EU's 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, and in response to the European Commission's stated concern, on 6 January 2020, that "*there are no women*", 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) (Updated 17 January 2020)**
- Annex II: Women with "Specialised Knowledge of International Trade Law" (Alphabetical) (Updated 17 January 2020)**
- Annex III: Analysis of EU Historic Appointments to Lists of Arbitrators (Corrected)**
- Annex IV: Email from European Commission (Mr. Colin BROWN) dated 9 January 2020**

The List of Arbitrators at Annex I and II has been updated. Annex III has been corrected to show that **only 8 women and 21 men have ever been appointed to an EU trade agreement chairpersons list.**

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,



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Enclosures

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