

**Meeting of the Joint Oireachtas Committee on Enterprise
Trade & Employment to discuss CETA**

Opening Statement by An Tánaiste Leo Varadkar, T.D.

Wednesday 22 September 2021

Thank you Chairman and Committee members for the opportunity to discuss this important Trade Agreement for Ireland.

As the Committee will be aware, the Joint Oireachtas Committee on EU Affairs debated CETA over several hearings and published its report last Wednesday. I hope we are now moving closer to a time when we can take a vote of ratification.

Ratifying CETA is Government policy and an objective of mine as Minister for Enterprise, Trade and Employment.

While I welcome the scrutiny, I do not want ratification delayed and drifting indefinitely, and for Ireland to have to stand by and watch other EU Member States ratify it ahead of us, as the majority already have.

That would send out the wrong message to the world, one of a waning commitment to trade and free enterprise in Ireland which would have negative consequences for investment and employment. Ireland should be a leader in Europe in support of free trade.

As a country, we owe our relative prosperity to the goods and services produced by our people and our land which we sell around the world. It is a formula that has worked very well.

It is based on international trade, our attractiveness as a place to invest and our ability to enter international free trade agreements with other countries. Our position at the heart of Europe, its Single Market and the eurozone is also crucial to this.

This economic model has consistently raised our living standards through the decades and created hundreds of thousands of jobs for our citizens. We will depend on that for our pandemic recovery.

Since the provisional application of CETA in 2017, the benefits have been plain to see.

Goods exports to Canada increased from €953 million in 2016 to more than €1.7 billion in 2020, an increase of 78%.

Services exports grew from €1.6 billion in 2016 to more than €2.3 billion in 2019, an increase of 44%.

This all benefits Irish jobs, Irish businesses and Irish tax revenues, which we use to fund our public services and public infrastructure.

The elimination of tariffs, reduced trade barriers and simplified customs procedures and the more compatible technical requirements that flow from CETA make it easier and cheaper for Irish companies of all sizes to trade with Canada.

In April this year, my Department released the results of an independent study by Copenhagen Economics of the potential economic opportunities and impacts for Ireland of the EU's free trade agreements with Canada, South Korea, Mexico and Japan.

It found that these four European Union FTAs are forecast to have a positive effect on trade, GDP and national income for Ireland.

The deal with Japan benefits us the most, due to the size of that country and its economy, which is approximately 120 million citizens relative to Canada's 38 million.

An important finding in the Study is that real wages would increase by up to 4.4% by 2030 as a result of the trade agreements, with the largest increases for low-income workers.

This demolishes the idea that well-designed free trade agreements exert downward pressure on wages or labour standards when, in fact, the reverse is true.

As members are aware, the full coming into force of CETA, once ratified by all EU Member States, will see the implementation of the investment chapter of the agreement, including provisions for the resolution of disputes between investors and states should they arise.

This has been the area of most controversy.

All international agreements have dispute resolution arrangements. Where such agreements cover, not only trade in both goods and services but also investment rules and protections, then there must be some form of dispute resolution mechanism that covers investments.

The EU's new approach to investment protection is the Investment Court System, or ICS, which is contained in CETA and replaces the old Investor-State Dispute Settlement or ISDS mechanism. This is something we, as the European Union, looked for in the negotiations. It's not something being imposed on us.

In relation to ICS, I must emphasise that the rights of governments to regulate in the public interest is paramount and I believe this is fully protected under the terms of this Agreement and the accompanying Joint Interpretative Instrument.

Investors may utilise national courts or the ICS but cannot use both or forum shop.

Equally, it is important to remember that a Canadian firm can already sue the Government for alleged unfair treatment or discrimination in our courts whether CETA exists or not.

In the courts today we see plenty of examples of companies suing the Government and its agencies or the Government and its agencies suing companies. The same will apply to Irish companies that operate in Canada, so it very much works both ways.

What CETA simply provides is an arbitration alternative to using national courts. However, that alternative, unlike a challenge in the courts, cannot find any act by Government to be ultra vires or unconstitutional - it is concerned only with redress *if* harm is proven.

If Ireland were not to ratify CETA and instead sought to allow provisional application to continue on an indefinite basis, this would bring substantial legal uncertainty for businesses around tariffs and market access, as well as customs and conformity requirements.

It is also the case that indefinite provisional application is unprecedented and would be open to legal challenge.

There would be no quantifiable benefit to Irish businesses or the Irish economy overall from rejecting the Agreement.

In terms of potential costs, it would be an entirely hypothetical exercise to try to estimate what, if any, costs could arise for the Exchequer on foot of any judgement under the ICS or to say what type of discrimination would be substantiated against the State.

It is not possible to anticipate the sector of the economy or the size of the company which may pursue such a claim. But the Irish State has a strong reputation for rule of law, and no record of treating inward investors unfairly, inequitably or in a discriminatory manner which are the criteria under which an award could be made.

Hence, the State's exposure to economic loss cannot be regarded as materially affected by the introduction of the ICS mechanism provided for within CETA. This is particularly so given the existing recourse that inward investors from any jurisdiction have to the domestic courts.

In light of the experience and track-record of the Irish Government in supporting foreign investment in Ireland, the risk or likelihood of an award being made against the State could be considered negligible.

On that basis, the protections offered by CETA to Irish investors in Canada would far outweigh any potential exposure to the State under the Agreement.

The day-to-day administrative costs of the ICS tribunal including the retainer fees of the fifteen members will place no charge on the Exchequer and will be covered by the budgets of the EU Commission and Canada. Therefore, there are no costs directly arising from CETA.

Chairman, under the ICS a state can never be forced to change its legislation, only to pay fair compensation in cases where the investor is deemed to have been treated unfairly under the specific grounds detailed.

An investor cannot be given compensation just because they have lost profits or suffered economic loss or costs. It is for the investor to prove they were discriminated against and to establish that it incurred losses as a consequence of the discrimination.

CETA preserves the right of each EU Member State to regulate to achieve legitimate policy objectives, such as the protection of public health, the environment or consumer protection, meaning policies such as those relating to plain packaging on cigarettes, or minimum alcohol pricing can continue to be introduced. These “right to regulate” provisions are specifically designed to avoid any danger of so-called “regulatory chill”.

As part of the finalisation of the Agreement, the EU and Canada also agreed a legally binding Joint Interpretative Instrument that was added to CETA to provide further assurances in relation to public services, labour rights, environmental protection and investment.

CETA does not restrict either the EU or Canada from passing new laws in areas of public interest such as the environment, and health and safety nor does CETA affect the Government’s scope for developing new laws in response to the needs and priorities of Irish citizens.

Importantly, within CETA, both sides agree that more trade and investment should not be at the expense of environmental protection and labour rights.

The EU and Canada will not seek competitive advantage through the lowering of standards in any domain. On the contrary, the European Union and Canada are committed to ensuring that CETA helps confirm that economic growth, social development, and environmental protection should go hand in hand as far as is practicable.

Chairman, as a small, open economy, Ireland has benefited immensely from our export-orientated enterprises trading across the globe and, therefore, we support international trade and the EU free trade agreements that seek to underpin this.

Ireland has been an attractive destination for foreign direct investment for many decades, and participating in EU third country agreements that cover investment and provide investment protection continue to assist us in marketing Ireland as a competitive FDI-friendly jurisdiction for multinational enterprise to invest in, with the attendant jobs and prosperity that entails.

On that basis, and given that there can be no doubt that CETA is a progressive, high-standard agreement, I believe that ratifying the Agreement, albeit at this late stage, would send a positive message to our trading partners around the world that Ireland continues to be committed to the values of open and fair global trade.

I again thank the Committee for taking the time to consider the agreement in detail. I hope this process can help us to move towards ratification very soon.

ENDS