DÁIL ÉIREANN

AN COMHCHOISTE UM GHNÓTHAÍ AN AONTAIS EORPAIGH

JOINT COMMITTEE ON EUROPEAN UNION AFFAIRS

Dé Máirt, 13 Aibreán 2021

Tuesday, 13 April 2021

Tháinig an Comhchoiste le chéile ag 9.30 a.m.

The Joint Committee met at 9.30 a.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
John Brady,	Regina Doherty,
Francis Noel Duffy,	Sharon Keogan,
Seán Haughey,	Vincent P. Martin,
Brendan Howlin,	Michael McDowell.
Ruairí Ó Murchú,	
Neale Richmond.	

I láthair / In attendance: Deputy Jennifer Whitmore and Senators Lynn Boylan and Alice-Mary Higgins.

Teachta / Deputy Joe McHugh sa Chathaoir / in the Chair.

Impact of the Comprehensive Trade and Economic Agreement on Irish-Canadian Trade and Relations: Discussion

Chairman: Cuirim fáilte romih Ms Suzanne Drisdelle, chargé d'affaires of the Canadian embassy, Mr. Reuben East, trade and economic counsellor at the Mission of Canada to the European Union, and Mr. Chris Collenette, chair of the Ireland Canada Business Association, ICBA, to our meeting. We have not received any apologies from members to date. We are joined by Senators Boylan and Higgins and Deputy Whitmore who are not members of the committee. They are welcome.

All witnesses are reminded of the long-standing parliamentary practice that they should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable, or otherwise engage in speech that might be regarded as damaging to the good name of the person or entity. Therefore, if their statements are potentially defamatory in relation to an identifiable person or entity, they will be directed to discontinue their remarks. It is imperative that they comply with any such direction. For witnesses attending remotely from outside the Leinster House campus, there are some limitations to parliamentary privilege, and as such they may not benefit from the same level of immunity against legal proceedings as witnesses who are physically present in the building. Witnesses participating in this committee session from a jurisdiction outside the State are advised they should also be mindful of their domestic law and how it may apply to the evidence they give.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable. I remind members of the constitutional requirement that they must be physically present within the confines of the place where Parliament has chosen to sit, namely, Leinster House or the Convention Centre Dublin or both, in order to participate in public meetings. I will not permit members to participate where they are not adhering to this constitutional requirement. Therefore, any member who attempts to participate from outside the precincts will be asked to leave the meeting. In this regard, I ask members partaking via Microsoft Teams to confirm they are on the grounds of the Leinster House campus prior to making their contribution to the meeting.

I now call on Ms Drisdelle to make her opening statement. I ask the three individuals who are making presentations to keep them short, which will allow for more interaction with the committee and more time for discussion.

Ms Suzanne Drisdelle: I thank the Chair and the esteemed committee members for inviting the Embassy of Canada to this important discussion on CETA, the Canada-EU Comprehensive Economic and Trade Agreement. I am the chargé d'affaires of the Embassy of Canada to Ireland. In my 20-year career with Global Affairs Canada, I have worked extensively with small companies, helping them to navigate international business. I am joined today by my colleague at the Mission of Canada to the European Union in Brussels, Reuben East. Mr. East has been a senior counsel and negotiator in several trade agreements, including CETA. We are very happy to be here today.

Although I am a "come from away", as they say in Newfoundland, in my year and a half here in Ireland I have been very impressed with the warmth of the Irish people and with the resilience of my own community. Before the pandemic, not a day went by on which I did not meet someone who had a relative in Canada. Members may know that 4.5 million Canadians

have Irish heritage, which represents approximately 14% of our population. Just last month, Canada's House of Commons officially declared March as Irish Heritage Month, recognising the important contributions that Irish-Canadians have made to Canada.

We have a very strong relationship, which greatly benefits both of our countries, especially in the increasingly uncertain world in which we live. It is more important than ever that like-minded countries such as Ireland and Canada work together to address global issues. Canada greatly values its partnership with Ireland, the common approaches we take on many global issues such as climate change and environmental protection, as well as our shared commitment to multilateralism.

We both face challenges in our economic recovery from the Covid-19 pandemic. We are both trading nations and our economic recovery depends on strengthening our global trade and investment partnerships. Our recovery also depends on the resilience of our small and medium-sized enterprises, SMEs. SMEs are the backbone of our economies. They make up the vast majority of Canadian and Irish exporters and face the greatest barriers to international trade. From my experience working with small companies and start-ups, I know that going global is very intimidating. Small companies often do not have the resources to do market research or to figure out things like customs regulations and business planning. I am sure many Irish companies can relate to this. SMEs stand to benefit the most from CETA's tariff elimination, clear rules for goods and services exports and simplified customs procedures.

The economic benefits of CETA to Ireland are clear, starting with Ireland's €1.6 billion trade surplus with Canada. Members will have seen the figures in the information we provided earlier. Since the agreement's provisional application, Irish exports to Canada have increased by 58%. There are many other statistics relating to other sectors including dairy, baked goods, textiles, whiskey and beef. There has been a 700% in beef exports since CETA came into effect and cheese exports have increased by 400%. In addition to the elimination of these tariffs, the other important thing about CETA relates to trade in services. There are many non-tariff elements to the agreement in areas such as procurement and labour mobility. These are of benefit to the services industry. Our two-way investment has also grown. Some 75 Canadian companies have opened an office or invested in Ireland, which has created 15,000 jobs so far. CETA presents a major opportunity for Ireland and Canada to build on these benefits and create jobs in both countries. This will be especially relevant as both countries try to recover from the current pandemic.

Our nations understand the role international trade can play in projecting our core values in the international system, for example, climate action and gender equality. CETA is not just a trade agreement. It is a comprehensive and inclusive agreement with high standards for consumers and workers and upholds the high levels of labour and environmental protection that our citizens expect. CETA preserves the ability of Ireland and Canada to adopt and apply their own laws and regulations in the public interest such as the protection of public health, the environment and labour rights. It supports ongoing dialogue and collaboration on these topics through various advisory groups and an annual civil society forum. The question is not whether we need to hasten economic recovery but how we strengthen rules-based trade and increase predictability, stability and economic opportunity for our companies and countries. CETA upholds and promotes the values that Canada and Ireland share. Under the deeper economic and trade relationship enabled by CETA, Ireland and Canada can look forward to the next phase in the development of our partnership.

I thank members for their time and their initiation to join this important discussion. We can

provide additional information if required and would be happy to answer members' questions.

Mr. Chris Collenette: I thank the committee for the opportunity to speak today. I am honoured to do so along with two esteemed Canadian diplomats. However, my experience is a little different from that of theirs. While I am indeed Canadian, I have also lived in Ireland since 2007. I witnessed the tail end of the boom and lived through the bust. I saw at first hand the challenges faced by many young families when jobs were lost and their homes went into negative equity and I would prefer never to see that again for this country. My wife is Irish, my two children are Irish, we own a home here and we have an Irish-managed pension. If that does not provide me with enough Irish street credibility, I should note that one of my paternal great-grandmothers was a Mellett from Mayo and one of my maternal great-grandmothers was a Daley from Sligo.

I am here in a voluntary capacity representing the Ireland Canada Business Association, ICBA, which is an Irish non-profit corporation founded in 1978. We represent 100 companies doing business between the two countries - the core of which are Canadian companies with operations here. It is an organisation that has doubled in size over the past six years in part because of CETA and in part because of Brexit.

It is the position of the ICBA that the immediate ratification of CETA is of great importance to Ireland's economy and that not to do so would be detrimental to its post-Covid recovery. Ireland and Canada enjoy an incredibly strong business and cultural relationship. A failure to ratify CETA could weaken this relationship in the first instance and make Ireland less attractive to Canadian investment in the second instance, not to mention investment from other countries. Fifteen other European Union member states have already ratified CETA, leaving Ireland in the position of now playing catch-up with its EU counterparts. We believe that based on the strong links between the two countries, as the member state that is closest geographically to Canada and the last English-speaking member of the EU, Ireland owes a duty of friendship to show leadership among EU member states and ratify this deal without haste.

The Ireland-Canada relationship benefits the country in two major ways - inward investment and exports. If members take away anything from my remarks today, it should be that the numbers do not lie. Canadian direct investment in Ireland stood at over €6.3 billion at the end of 2019. There are roughly 75 Canadian operational companies in Ireland, which employ approximately 15,000 people. It is estimated that of those 15,000 employees, 7,000 come from IDA Ireland companies in that IDA Ireland worked diligently to bring them here. As many as eight jobs are created in the wider economy for every ten created by IDA Ireland client companies, so based on that, those 7,000 jobs potentially support another 5,600 jobs, bringing the tally of inward investment jobs to around 20,000. Canadian investment does not only benefit Dublin. Regional investment is significant. It includes SOTI and Celestica in Galway, Greenfield Global in Laois, the Optel Group in Limerick and Vermilion in Mayo, as well as eSentire, Open Text and Irving Oil in Cork and many more. It is unlikely that there is any area of Ireland that does not benefit from the Ireland-Canadian relationship, including those areas represented by the members of this committee. For over 30 years, IDA Ireland has worked consistently to create the Ireland Inc. brand, with enormous success. Not ratifying an important trade deal like CETA damages that hard-earned reputation and signals to other potential investors that perhaps Ireland is not as open to business as it once was.

That is only half the story. With regard to exports, over 600 Irish companies exporting to Canada support more than 25,000 jobs here. Apparently, wood for hockey sticks made in Sligo is exported to Canada. That should be welcome news to Deputy Harkin.

Since the provisional ratification of CETA, exports to Canada have grown by almost €1 billion and resulted in a 27% increase in goods exported. Last year alone, Ireland enjoyed a trade surplus of €1.7 billion with Canada, with €2.1 billion of Irish goods being exported to the country. There is no Irish or Canadian business person who, if making €1.7 billion more than his or her partner as the result of a provisional agreement, would not formalise that agreement. A point I would like to drive home is that this is a very good deal for Ireland, as it stands, as the agreement has been provisionally applied in the past five to six years.

The Canadian Chamber of Commerce and IBEC represent a combined 200,000 businesses employing more than 10 million people and they also support CETA. At a time when we do not know the effect Brexit will have on the export relationship with our largest historical trading partner, Ireland needs to secure new export partners. CETA does that. At a time when the economy will be recovering from a global pandemic, winning international investment that will result in high-quality jobs has never been a greater priority. Indicating to the world that Ireland is still open for business, by ratifying a lucrative trade deal like CETA, will do just that. On behalf of the ICBA, I ask members to recommend the ratification of CETA to their colleagues in the Oireachtas without haste. I thank members. I am more than pleased to take any questions they may have.

Chairman: I thank Mr. Collenette. He mentioned almost every county in Ireland but he has until 10.30 a.m. to make some connection with Donegal. I look forward to that.

Mr. Chris Collenette: My mother-in-law is from Mayo so I had to get that in.

Chairman: There are two members of the committee from Mayo so Mr. Collenette's research has been spot on. I will do things slightly differently today to give members some flexibility in putting questions and asking follow-up questions. I will try this approach today because I think we have time. We will see how we get on. Members will have seven minutes, which does not mean they have to use all their time. They have flexibility and I hope it will allow them to follow up with additional questions. I will start with committee members and then move to non-members. If the approach works and members do not filibuster, we might get in a second round of questions. We will see how it goes.

Deputy Neale Richmond: I thank the speakers very much for joining us. With your indulgence, a Chathaoirligh, what I hope to do with your enlightened approach is to split my questions into two groups. The first group is for Ms Drisdelle and Mr. East and the second is for Mr. Collenette. I ask Ms Drisdelle and Mr. East to bear in mind when responding that I still have a few questions for Mr. Collenette. I would really appreciate that.

I was very happy to hear the witnesses mention the moves last month in the Canadian Parliament to declare March Irish heritage month. I know James Maloney, MP, well. He has visited this House many times when that was possible and I look forward to seeing him back in Dublin. He has played a very important role in the Irish-Canadian relationship at a parliamentary level. Could Ms Drisdelle and Mr. East possibly flesh out the Canadian aspirations for CETA because we will hear a great deal about Irish and EU aspirations? Could they provide more detail on where the Canadian Government sees it fitting into the overall Canada-Ireland friendship? Being a little more political, what is the public response in Canada to CETA? We know what the public response has been in Ireland and we hear regular reference to the public response across the EU, but very little emphasis is put on concerns or aspirations in Canada. An issue that many people will avoid, from a Canadian point of view, is what would happen if EU member states failed to ratify CETA. Where would the Canadian Government take the deal? What are its

aspirations or concerns?

I have a related question for Mr. East. We have not spoken yet but I know from his curriculum vitae that he was very closely involved in the negotiations. Many people are saying that if the deal has to be reopened, now is the time that can be done and that we should push for that. From a Canadian point of view, can CETA realistically be reopened? From a Canadian point of view, and bearing in mind that Canada is representative of many of our global markets and aspirations, what do the witnesses think it would say about Ireland if this country, rather than the EU, were not to ratify the agreement?

Ms Suzanne Drisdelle: I thank the Deputy for his questions, of which I have made note. He asked about the aspirations of Canada for CETA. It is true that we have been focusing here on the benefits to Ireland, of which there are many. Many of those benefits are mirrored for Canadian companies. Similarly, Canada is next to a very large market. Traditionally, many of our exports have gone to the United States. In recent years and with the Covid pandemic, one thing that has shone a light for us all is global value chains, as well as supply chains. Canada's trade diversity strategy has definitely encouraged companies to look beyond traditional markets. I think Irish companies can relate to that in terms of Brexit and their former dependence on the UK market. In that regard, CETA is a great opportunity for Canadian companies to have new market access in the European Union. That only benefits the bilateral Ireland-Canada relationship. Part of my job is to inform Canadian companies about Ireland. Even though it is a small market, it is a stepping stone into the EU. It is a common law and English-speaking jurisdiction. We try to promote the investment and business friendly arguments to Canadian companies. The same benefits, such as reduced tariffs on goods, labour mobility in terms of the ability for business people to move more freely and access to procurement, definitely apply for both sides.

With regard to the public response to CETA in Canada, the agreement was negotiated over seven years, so it has been a very comprehensive discussion. Civil society was involved throughout that process. There were stakeholder engagements across Canada and many mechanisms within the negotiations that brought in stakeholders from industry, civil society groups and environmental groups to ensure those interests were heard in the negotiations. As the Deputy may know, in 2016, based on further discussion with civil society in Europe and Canada, some aspects of the CETA investor dispute resolution mechanism were revived, regenerated and modernised to address specifically some of the issues raised by Canadian civil society. This is a normal process in any democratic country when there is a new trade policy or trade agreement and that is something to which Canada is committed. I would say it continues; it is not something that ends here. CETA has in-built mechanisms for ongoing discussion and dialogue both within Canada and with the European Union. That is an issue we can discuss a little more at a later stage.

To deal with the Deputy's question on ratification, Canada welcomes Ireland's efforts to ratify CETA and move forward with the ratification process. I understand the Government has asked the committee to fully scrutinise and assess CETA. My colleagues and I definitely support that and all of the discussions that need to happen to fully understand and clarify that this is a good deal for Ireland and Canada. Canada is confident that this is a good deal. We will do anything we can do at this session to clarify members' questions on it. It is vital in our economic recovery to have rules-based systems such as CETA to enable predictability and easy access to participation in the benefits of trade by all parts of society.

I ask my colleague, Mr. East, to deliberate further on some of the technical questions asked

by the Deputy regarding the agreement and its possibly being reopened, as well as ratification.

Mr. Reuben East: I will be brief as I know the Deputy directed a few questions at Mr. Collenette. I will not add much to the remarks of Ms Drisdelle except to say that I absolutely agree in respect of ratification. We respect Ireland's deliberations on this issue and the democratic process. We support that and appreciate that it will take the time it needs.

On the question regarding reopening CETA, there were at least seven years and possibly even nine years of negotiations. We have an agreement now that has been provisionally applied since 2017. That is a very long time in which to not only negotiate but to then have this agreement provisionally applied. Reopening it would probably not be a light matter. I will stop in case Deputy Richmond has any follow-up questions.

Chairman: We have hit the seven-minute mark. If we stick to what Deputy Richmond called our new enlightened approach, he may be able to ask his follow-up questions afterwards, if that is agreeable.

Deputy Brendan Howlin: I hope the Chairman can hear me. I confirm that I am in the Leinster House precincts. I have to get in a mention of Wexford. Ms Drisdelle said she is a Newfie. There are very strong relations between my home county and Newfoundland. There are people in Newfoundland who still speak with a Wexford accent so we have strong and enduring connections. I have been privileged to represent the Irish Government at St. Patrick's Day celebrations in Canada and remember the history of Grosse Île and the implications of the interconnections over a very long time.

I will focus on one aspect of our discussions. I believe there is very broad support among most parliamentarians for deep and wide-ranging trade agreements, and even more than trade agreements, between Canada and Ireland. There is no argument or bone of contention about that. There are very few who are opposed to international trade or who do not recognise the importance of international trade for the benefit of Ireland and our historical development, certainly in the past 20 years. The one bone of contention that has caused concern not only for politicians but for civil society is the investor court system or ICS. I ask this question of whomever feels best able to respond, and perhaps it is Mr. East. It relates to the issue of the investor court system, which is the unimplemented part of a trade deal that has been largely implemented. The argument being put to us by experts is that this is a system that hugely advantages private companies - major corporations - to take actions against domestic governments. The question being posed to us that I would pose to the witnesses is why Canada would not trust the Irish courts system to adjudicate fully, in an impartial and fair way, on any dispute that might arise. Similarly, why would Ireland not completely depend on and be confident in the decisions of the Canadian courts system? In that instance, and I believe the answer must be that in normal circumstances we would have absolute confidence in each other's legal systems, why is the investor court system essential? The linked question is whether it is essential or if it is possible to regularise and ratify what is more than an important trade agreement between the European Union and Canada without this contentious element that has caused problems.

Chairman: We have a specific question and a linked question. Who will take those questions?

Ms Suzanne Drisdelle: If I may, I would like to answer this question. I certainly am aware of the issues discussed in the media in Ireland around the investor court system. I would like to clarify that the investor court system replaces the investor state dispute settlement, ISDS. One

thing I have noticed in the public discourse in Ireland is some confusion about the difference between the two. All trade agreements that include investment protection - not all of them do - require a platform for the resolution of disputes. In democratic countries such as Canada and Ireland, the platform provides an open, transparent facility for companies to pursue arbitration or even mediation and consultation in the case of a dispute. Unfortunately, disputes are a reality in international business. The ICS provides an innovative approach to investment dispute resolution and procedures to resolve disputes in a fair and transparent manner. The process includes elements such as enhanced consultation and mediation, which were not available in the previous version, the ISDS, and that is why Canada agreed with the European Union to revise the older version in CETA.

CETA will not put in jeopardy or question the validity of our respective democratic and judicial systems. It may not be clear that investors can, if they want, go through domestic courts for these kinds of issues. CETA does not prevent companies from doing this.

I ask my colleague, Mr. East, who is more familiar with the technical sides of the agreement to expand on it.

Mr. Reuben East: I will address the reason CETA is essential because this complements what Ms Drisdelle has said. Investors may pursue action against a state in the domestic courts or through the ICS. The ICS does not preclude an action before the domestic courts. There are, therefore, two possibilities. However, it is important to be more precise, in answer Deputy Howlin's question on dropping the ICS system. If there were no ICS or dispute settlement system to enforce the obligations under the CETA investment chapter, chapter 8, the investor would have no recourse to make a claim before the domestic courts because these are matters of international law.

Article 30.6 of CETA makes clear that there is no direct right of action for parties in the domestic courts. This is important as it means that, absent the ICS, there would be no ability to enforce the investment chapter obligations. This does not mean an investor cannot take action in the courts but this is usually in the realm of matters such as a judicial review or any rights of action already provided in the domestic system.

CETA does not limit the jurisdiction of the Irish courts in any way because it states the scope of a tribunal is such that it can only decide claims related to the substantive obligations under the chapter. Opining on domestic laws, for example, or court decisions is outside the jurisdiction of the ICS.

A specific provision in Article 8.3.1 indicates ICS tribunals cannot overturn government decisions or laws. A tribunal can consider the domestic law of a party but only as a matter of fact and must follow the prevailing interpretation given to the domestic law by domestic courts, including the Irish courts.

Mr. Chris Collenette: Deputy Howlin will be pleased to know that a few years ago I did a little work for Irish Country Meats, ICM, in Camolin, County Wexford, just over the border with Wicklow, which resulted in some of the first exports of Irish lamb to Canada, or from ICM anyway. I want to make it clear that these protections are in place for Irish companies too. For example, an agricultural exporter like ICM is in the Deputy's constituency. These protections can be availed of by Irish companies as well, which is important to reference. I invite Deputy Howlin and all the members of the committee to read articles 8.1, 8.10 and 8.12. If members read these short articles, which are less than a page, they would reflect and say they would hope

any company in their constituencies would have these types of protections when dealing internationally with international goods. I invite members of the committee to read those articles.

Deputy John Brady: I will not be outdone by some of my colleagues who have mentioned their counties. Mr. Collenette briefly mentioned Wicklow. There are very strong connections between Wicklow and Canada going back to 1847, particularly around the Coollattin estate, from where thousands of Wicklow people were sent by the Fitzwilliams to help build the New Brunswick-Quebec railway line. This was probably one of the first trade agreements, in that Wicklow citizens were sent over and in return Lord Fitzwilliam got shares within the railway company and was paid for these Wicklow residents who were sent over. I daresay this was probably one of the first trade agreements between Canada and Wicklow.

I note that the speakers all referred to the importance of ratification in terms of diplomatic relations between Ireland and Canada. I ask whether the speakers are honestly saying that diplomatic relations could be damaged because Ireland chooses to trust its own independent court system to settle investor disputes? I note some of the comments made already. It has to be said that our court system has served investors well and has facilitated decades of inward investment from Canada and other countries.

I also point to the recent executive order issued by President Biden very shortly after he assumed the presidency. Within his first few days he halted the Keystone XL pipeline, a decision made more possible by the fact that the US and Canada had renegotiated investor-state dispute settlement, ISDS, out of their United States-Mexico-Canada agreement, USMCA, a trade agreement which dates back to 2018. It has to be noted that on the day before the two presidents met in February, President Biden reaffirmed his position and said it was not up for review. On 23 February the two presidents announced the US-Canada partnership roadmap. I will ask a very direct question. Are speakers saying that Ireland will be treated differently from its US counterparts because we choose to reject the investor dispute mechanism?

Chairman: The Deputy has asked a very specific question. I will allow all three witnesses an opportunity to answer.

Mr. Chris Collenette: I will say quickly that Ireland would not just be saying no to the ISDS, but it would be saying no to the entire agreement. It is not a pick and choose situation. It was negotiated over many years. Changes were made that reflected some of the concerns regarding the previous ISDS. From a larger standpoint, does it help the relationship? No, it does not help the relationship. I will be clear on this.

I was asked why we need it. The Deputy is right that the Irish courts have served the interests of the State and international companies very well here. A couple of years ago, the Commercial Court was introduced and that was really so that the normal courts system did not get clogged up with commercial disputes up to a certain amount. What the ICS provides is an arbitration dispute mechanism that allows parties - companies and countries - to resolve their issues. I should note that in the text, it notes that any dispute should be dealt with immediately and will, hopefully, come to a conclusion.

Ms Suzanne Drisdelle: To add to Mr. Collenette's comments, the Embassy of Canada and the Government of Canada believe firmly that this is a good deal for Ireland, and I would like to reiterate that. We have a very positive collaborative historical relationship. In terms of what my colleagues said earlier, the ratification process is really a matter for each member state of the European Union and we fully respect the democratic process and the consultations, such as

we are having today, that must happen for that. We are very confident this is a good deal for Ireland.

With regard to the Deputy's question on why the ICS was not part of some other trade agreements, every trade agreement is based on each party's interests and, in this case, Canada agreed with the European Union's request to modernise the investor dispute platform within CETA. This is not always the case with other partners and conditions are quite different in other situations. This is a new, innovative approach. CETA does set a precedent. It is a gold star free trade agreement that encompasses more than just trade.

I reiterate that I have no concerns, and Canada has no concerns, that this will be damaging to Ireland, its democratic process, the rights of its citizens or the right of the State to regulate in its own interest.

Mr. Reuben East: I will add a quick point in response to the Deputy s question on the Canadian and Irish courts. Canada certainly respects the Irish court system and Canadians are very proud, rightly so, of the Canadian court system. Nothing in CETA precludes an investor from pursuing a case before the domestic courts under the domestic law, as it provides. As I, hopefully, explained earlier, without recourse to an ICS and to that system, there would be no recourse, essentially, for an investor in regard to the obligations under the investment chapter, and one could not argue, for example, a breach of national treatment before the Canadian courts pursuant to the investment chapter. It is really important for Canada that our investors have the same type of recourse abroad as they would have domestically, so, for us, it is really important to have these core obligations to go with it and the ability to enforce those obligations. That is what the ICS does. Certainly, we are very proud of our domestic system and Ireland is rightly proud of its own domestic system for the courts, but this aspect of recourse is quite important.

Senator Vincent P. Martin: I thank the witnesses for their generosity of time and expertise. My family home is in Kildare and I have Canadian neighbours, so I am aware at first hand of how Canadians built up our county. Some time ago I had the privilege of leading a trade mission to Peterborough in Canada where there were street names such as Cavan Street, Donegal Street - which will be music to the ears of our Chair - and Monaghan Street. I had heard all about it but I was taken aback by the sheer deep mutual respect our countries have. Of course, Monaghan is twinned with Prince Edward Island. As all that is a given, what I will say next I say safely to our good friends, because that deep friendship is so unflinching that I have no deep worries about agreeing to disagree with Canada on this.

Ms Drisdelle spoke about predictability being very important in agreements, and I fully agree, but is it absolutely necessary to have that in the form of an arbitration option in the investor state courts, although that is an option? She also said that a platform is required for disputes and of course it is. She also said that enhanced mediation is really important and of course it is and the Irish courts do that. I have reservations. I am a fan and advocate of arbitration. Many years ago I became a fellow of the Chartered Institute of Arbitrators. It has a vital role to play and I would like to see it play a much more enhanced role in our country. However, allowing a foreign corporation to sue a sovereign state in a situation where a case is heard outside the state's legal system is not something that I support. Of course it does not overturn our Government's decisions. If the witnesses are trying to give me succour by saying that, we would have lost our independence if that was true. However, I would be in dereliction of my duties if I was so blinded by the deep mutual respect and love we have for our countries not to point out the elephant in the room. I know this morning's discussion is not a legal examination but I am asking the witnesses whether, were they able to turn back the clock, it was absolutely necessary

to usurp the role of the Irish courts. I believe the Canadian courts are just as good. They are tried and tested. They operate and exercise their judgments without fear or favour and have been tested before. Their integrity and competency is beyond question. It was a safe bet. Why give them up?

I know the economic benefits, which have been highlighted in compelling and stark terms. They are hugely attractive but I must speak as a public representative who values our country's sovereign and constitutional courts. The witnesses can say that it is an option but everyone knows that the selling point of arbitration, and one of its hallmarks, is that it is private and confidential. I do not want my country in a private and confidential dispute; I want transparency. Everyone knows that arbitration, even this kind of advanced, non-*ad hoc* type, is binding and cannot be reopened. One only litigates on it to enforce it or, in a rare exception, to try to annul it. It is hugely difficult to get into an arbitration hearing. We have safeguards in this country and in the celebrated democracy in Canada. Why this one-size-fits-all approach? Why stir things - I ask that with the upmost respect - when it could have been done in a way that all would have embraced, including me? Why go that extra yard to cause this sacrificial, unnecessary tension when we could have had just as good a deal with the same amazing celebration of our mutual economic benefits without it? I accept it is not quite a one-way street and that Ireland had done well. I say "thank you very much" to our brothers and sisters in Canada. We love them but we do not like private, unaccountable, confidential dispute hearings involving our country when they are not absolutely necessary. I thank the witnesses. I hope that I balanced my comments with my unequivocal respect for the economic benefit but, most importantly, for Canada. It is up there. I have seen the love that our country has received, the way it is treated in Canada by leading that trade delegation. I have also seen that Canada is very independent and non-judgmental. I am sure that we will agree to disagree on this issue. We have different views but it does not, and should never, affect our overall super relationship.

Chairman: The Senator has blown my new strategy to pieces by using the full seven minutes. That said, it is important that the Senator gets a response. I ask the three witnesses to respond.

Mr. Chris Collenette: Perhaps Ms Drisdelle might pick up on the open and closed comments made by the Senator on arbitration, which may not be altogether correct.

Ms Suzanne Drisdelle: I thank Senator Martin for his eloquent explanation of the concerns that he has and the issues that he has outlined and, of course, his compliments to Canada. I fully understand that this is an open discussion and as the Senator said, we can safely discuss the issues. I appreciate his thoughts.

The Senator mentioned safeguards and talked about transparency. Those are exactly the things that are built into the ICS system. The ICS specifically and intentionally outlines the processes and details and it is done in a way that is more transparent than the older *ad hoc* system of arbitration. Again, we are not questioning the validity of our domestic courts but it is essentially why the EU asked Canada for a revised and modernised system for arbitration.

In respect of safeguards, there are very specific elements which are untouchable and on which the member state or Ireland has a right to regulate in its own area. This includes elements like public health, safety, environment, climate and labour. These are elements that are outside of the areas that would be considered eligible for debate and a claim within the ICS. I ask my colleague, Mr. East, to elaborate further on that point.

Mr. Reuben East: I will be quick because I know that we are pressed for time. Some of the concerns outlined by Senator Martin have not only been acknowledged but addressed, in the reformed ICS system. Some of those areas include not only the right to regulate that is across the agreement that the chargé d'affaires, Ms Drisdelle, mentioned, but a new permanent, transparent and institutionalised dispute settlement tribunal system that is quite different to the traditional commercial arbitration system, because, for example, it no longer includes the ability to have *ad hoc* tribunal members. There is a roster of members that the states appoint themselves. The investors have no say in this, unlike under the *ad hoc* system. There are enhanced ethical requirements in a strict code of conduct that is quite innovative and goes beyond many of the old-style pieces in this area.

Senator Martin mentioned the limited right of appeal. I believe that he referred to it as an annulment. I acknowledge that under any of the old ISDS systems, such as cases taken under the International Centre for Settlement of Investment Disputes, ICSID, system, there is a very narrow right of appeal but it is very different under CETA. Indeed, the appellant system that was created provides very broad grounds of appeal. Therefore, it is quite innovative. A tribunal can uphold, modify or reverse an award. I would argue that this is an example of the reformed system that Canada and the EU were trying to accomplish with this new investment court system, ICS.

On transparency, we very much appreciate and acknowledge those concerns but hearings are, by default, open and documents are accessible to all. There is also an ability for non-disputing parties to make submissions as *amicus curiae*. There are actually quite a few reforms as well, to have a very transparent system.

Chairman: If it is okay with Mr. Collenette, we will move on and if he has a point to make on this, he can do so later. Deputy Ó Murchú is next, followed by Deputy Duffy.

Deputy Ruairí Ó Murchú: I should make mention of our close relationship, like everyone else has done. I am from County Louth, where we have the Thomas D'Arcy McGee Summer School in Carlingford. The last time we were lucky enough to be able to go to events, I was there and met General John de Chastelain. Obviously there are very close relationships between Ireland and Canada and I do not think that decoupling ISDS from any particular trade deal is necessarily going to impact on that greatly.

There is a belief that with ICS and CETA, we are undermining the chances of a UN multilateral dispute mechanism, which could have all of the benefits to which people have referred. In fairness, the benefits in relation to trade and increasing trade relate to the fact that the deal has been done and is in operation outside of the ICS. The French are openly talking about pulling out of the Energy Charter Treaty because it is hampering climate action. We know that the Dutch and others are being sued at the minute. We are seeing moves away from ISDS. Under the previous US Administration, the ISDS element of the North Atlantic Free Trade Agreement, NAFTA, was renegotiated between the US and Canada and has practically been abolished in the new agreement between the US, Canada and Mexico. President Biden's Administration seems to be following the same approach and is on the record regarding its opposition to including such ISDS provisions in future trade agreements. To a degree, it looks like we have moved away from it. I accept that tribunals are not necessarily going to change law but am worried about the chilling effect. The example we keep hearing about is the Philip Morris case and the fact it not only had an impact where it was taken, in Australia, but also had a huge impact in countries like New Zealand, which did not operate the same legislation for almost six and a half years. It is that chilling effect that worries me. In 2028 New Zealand's Minister for Trade

and Export Growth, Mr. David Parker, announced that his Government had signed letters of agreement with five other countries that were party to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, CPTPP, to exclude compulsory ISDS and a further arrangement was made bilaterally with Canada to restrict the use of ISDS.

SMEs were mentioned earlier but I think we all accept that what we are talking about here is big companies and corporations. I would like the witnesses to give an example of the direct right of action that a company does not have currently but would have under this agreement. Could that include, for example, an energy company that is impacted by a change in the law here, introduced from the point of view of the public good, banning the import of fracked gas? That might have an impact on an energy company, which might be able to take us over the coals and sue us. Would we be leaving ourselves hamstrung and open on the basis of ISDS?

It looks like a significant number of EU countries are in no rush to ratify this deal. Like a lot of deals, it may be the case that this element is never actually ratified and we just continue on, as is.

Chairman: We will start with Mr. Collenette.

Mr. Chris Collenette: While I was not altogether sure what the question was, as a general point I understand that we are here today to discuss the Ireland-Canada trade relationship, not just the investment court system, ICS. I invite members to read Article 8.10 of the relevant section in CETA. We are not just talking about multinationals, we talking about all companies that could avail of this. Consider a company from County Louth, for example, that employs people in the Deputy's constituency. Does he not believe that they should have the same rights to an open and fair arbitration in order to resolve a dispute in Canada? I guess that is really my question to the Deputy. I invite him to read Articles 8.10 and 8.12. It is my understanding that the worst-case scenario is that a fair market value is attributed to any decision, which I do not believe seems unreasonable in any way.

Chairman: Mr. Collenette has asked the question back to the Deputy. Will Deputy Ó Murchú come in briefly on that point?

Deputy Ruairí Ó Murchú: My argument and the question I put is that the tide is going out with regard to ISDS. The fear is that if the State wants to introduce legislation, it has the chilling effect on the basis that the State has left itself open to being sued because the corporation has the legitimate expectation of profit. While that is fine, if we want to introduce legislation for the public good, for example on climate change or anything else, we certainly do not want it hampered by this.

It has also been said by many others that this State, Canada and the European Union, already have a number of courts systems that are fit for purpose. We are not talking about rogue legal states. A number of trade deals have been drawn up in the past while and there seems to be a move away and a decoupling from ISDS. I note that even Canada has been involved in some of these. Perhaps we need a wider arbitration system but it should be done on a global basis with all those protections to protect from the chilling effect.

Chairman: Would Ms Drisdelle or Mr. East like to come in there?

Ms Suzanne Drisdelle: I will ask my colleague, Mr. East, to answer this question.

Mr. Reuben East: There are a few parts to the Deputy's question. The Deputy mentioned

the Energy Charter Treaty. Canada is not a party to that treaty. If there are any cases due to the Energy Charter Treaty, it could not come from a Canadian company.

To pick up on the point made by Mr. Collenette regarding Canadian SMEs, while I do not have the exact figure for Canadian SMEs operating in Ireland, I am aware that 88% of Canadian exports to Ireland are from SMEs. It would not surprise me if there was a similarly high number. I also heard the ministers at the CETA joint committee in March state that 99% of Canadian and EU companies using CETA are SMEs. Actually there is a very high number of SMEs using it; it is not necessarily just large corporations.

On the concerns about decisions of the Irish Government or court decisions, CETA is quite clear that the ICS cannot overturn a decision of the Irish courts and cannot overturn an Irish law of any kind. That is quite important.

We are aware of the concerns about the old ISDS system and the Deputy mentioned the Philip Morris case in that regard. This is a very different system that actually took those concerns to heart. I was one of the negotiators on this treaty and I worked very closely with my EU counterparts. We heard about these decisions and concerns and did our best to alleviate those concerns by coming up with a reformed ICS that is meant to be something that would not go against a multilateral investment court but, rather, complement it. It is a stepping stone and CETA makes mention of this. One does not preclude the other. In fact, it is our hope that it will be a good example when it is put in place of how a reformed ICS can work. We are very hopeful on the multilateral investment court front, but that is some years away, I think.

Chairman: I thank Mr. East. We will move on to Deputy Duffy, to be followed by Senator McDowell.

Deputy Francis Noel Duffy: I am very grateful to Ms Drisdelle, Mr. East and Mr. Collenette for their insightful contributions to the debate so far. They are very useful and have been very informative to me. I note and welcome this shared agreement for all the reasons outlined. However, I am interested in understanding and I think the reason we are here today is to understand, at least for me it is. I understand we do not have these types of agreements with the US or the UK in respect of legal disputes and we have carried out trade with them for decades. This implies that the Canadian and Irish courts are not fit for purpose in the context of disputes. Considering that my questions have been asked by previous speakers and considering trust between countries, I have an alternative question. Is it possible to give examples of the types of disputes that might come up, considering so many are prohibited, as noted here today, including with regard to the environment, etc. The worry is that we hear sovereign states are being sued for billions by corporations across the globe. I say this considering we are a small open economy in which some multinational companies have bigger pockets than the State. I would be very grateful if the witnesses could give some examples of disputes that might come up because that would help me understand. We are, as I said, a small economy and if someone tries to sue us for billions of euro, it will seriously affect our economy.

Mr. Chris Collenette: If a company wants to sue the Government of Ireland, it can do so already, and there are not a whole lot of companies or multinationals out there that have deeper pockets than a sovereign government, especially not Ireland's. The Deputy might want to point out which companies he believes have deeper pockets than the Government of Ireland.

Deputy Francis Noel Duffy: My experience working at a local level on a county council is that when legal disputes come before a county council - and I sat on one of the biggest in the

country - there is only so much money the State or a local council in that context can spend on legal disputes. It tends to leave them and not go near them. The point I was trying to make is that our Government will not be able to defend itself. It will be somebody else, people we do not get to nominate, and-----

Mr. Chris Collenette: Ireland would be part of the ICS. This is just another option.

Deputy Francis Noel Duffy: Can Mr. Collenette give me examples? All I am asking for are examples of what we might be sued over.

Chairman: We will give a chance to the speakers to respond now. I thank the Deputy. Does Mr. Collenette want to come back in?

Mr. Chris Collenette: Mr. East might want to give some examples, although-----

Mr. Reuben East: I thank Mr. Collenette and thank Deputy Duffy for his question. It is hard to speculate exactly on the cases that would come before the ICS, but what I can say is that the ICS was designed in response to concerns about the old ISDS system. I speak from experience because I have argued these cases for Canada under the old ISDS system. I am aware of what it is like to operate in that system and what these reforms might do for a state in trying to defend these claims. Let me point out a few things that are absent in the old ISDS system but present in the CETA ICS. One is specific direction in the text. There are many examples. I know we have referred often to the right to regulate but this is not an empty piece of text. When the parties put in something powerful such as the right to regulate and various other directions, these are directions to a tribunal about how to interpret the treaty. One starts with the text when interpreting the treaty and every tribunal member has to do that. The parties were quite deliberate in putting in this type of language. That is why one sees so many instances of clear language about the right to regulate.

The second point is that there were instances under the old system with cases that were essentially frivolous in nature but were attempting to sue for high amounts in damages. These are sometimes referred to as frivolous claims. Under the old system, there are not necessarily provisions to deal with that. Under CETA, there are two provisions to deal with that specifically. One is that there is a specific provision to deal with frivolous claims. The second is about when they can be dealt with. A claim can be dismissed by a tribunal before the first hearing. This is essentially the consultations phase. It is not even a formal claim yet, but the claim can be dismissed. Under that circumstance, it saves the state money and perhaps awards against the investor in a frivolous claims example.

There are two other safeguards. Parties have an ability under the CETA investment court system to issue joint interpretations. This is powerful because it can be on any part of the agreement. This can also happen at the consultations phase. The parties can issue a joint interpretation very early, not even at the formal stage yet, to clarify the meaning of a particular text, whether it is about the environment, labour regulations or such. Those joint interpretations are binding for the tribunals in future, which is important.

There is usually is not a real ability to appeal a case. Under the ICS, there is an appellate system which has broad grounds of appeal. This is different from the old ISDS model where there were usually narrow grounds to try to annul a case. I hope that helps the Deputy.

Senator Michael McDowell: My question is addressed to all of our speakers. I am grateful for their attendance. I will not reiterate what others have said about the ISDS system in general.

Am I right in thinking that a US company could, by making an investment through a Canadian subsidiary, attract protections under CETA that would not exist if it was a direct investor in Ireland?

Chairman: I will afford all three witnesses the opportunity to respond. Does Ms Drisdelle want to go first?

Ms Suzanne Drisdelle: I ask that Mr. East answer this question. It is a technical one and I know there is a simple answer.

Mr. Reuben East: I thank Ms Drisdelle. CETA does not allow enterprises from third countries to benefit from CETA's investment dispute resolution provisions simply because they have some activities in Canada or the EU, as the case may be. It is not in Canada's interest to provide CETA's benefits to third countries. We would like Canadian and European companies to have a competitive advantage over third countries under this agreement. I will illustrate with an example of an Irish investor operating in Canada. CETA's investment provisions would offer protection to an Irish investor or enterprise that is established in Canada or owned or controlled by an Irish enterprise or, third, can demonstrate that it has substantial business activities in Canada. That aspect is very novel under the ICS system. This means that an Irish company which was owned or controlled by, for example, a US investor, would be precluded from bringing a case forward or if it were still owned or controlled by an Irish investor but were merely a letterbox company, as they sometimes call them, it would also not have substantial business activities and would be precluded from bringing a case forward.

Senator Michael McDowell: I understand that there is an exclusion for letterbox companies and that there has to be a substantial connection, but I am talking about substantial companies. There are substantial companies created and established in Canada that have American shareholders. I think those American shareholders can decide to operate through their own companies when investing in Ireland or through a Canadian company which has a real connection to Canada. In those cases - not letterbox cases - is there effectively a back door for multinationals, which are established on both sides of the US-Canadian border, to cherry-pick and take advantage of investing through an established Canadian company? That kind of protection would not be afforded by Ireland to an American company or by America to Ireland under existing trading arrangements.

Mr. Reuben East: I appreciate that the Senator is not necessarily referring to letterbox companies and we have dealt with that part. One would need to look at the exact scenario to make a determination. The tests that I have outlined are quite clearly set out in CETA to guide tribunals in that. However, they are designed with the intent of barring those trying to access this agreement through a back door, as the Senator referred to it. The agreement is designed to assist Canadian and EU companies, in this case Irish companies, and not third country companies.

If there is a bona fide a Canadian company with substantial operations, that investor or that enterprise has a right of action. However, a US shareholder, as I think the Senator was describing, would itself not have that ability. It would need to have access through another agreement. It is really the Canadian company that can bring an action under that scenario. We are trying to protect such a Canadian company, or an Irish company the other way around, not a US shareholder *per se*.

Deputy Seán Haughey: I thank the three speakers for their presentations. I join others in acknowledging the close economic, cultural and social relations between our two countries.

Long may they continue.

Following the presentations, my takeaway points are as follows. Ireland has a €1.6 billion trade surplus with Canada. Since CETA was provisionally applied, Irish exports to Canada have increased by 58%. Those are significant statistics. I thank the speakers, particularly Mr. Collenette and Mr. East, for the clarity they have given regarding the competencies of the domestic courts versus the competencies of the investor court system. That is certainly something the committee should take away from this discussion.

Given Mr. East's experience with international trade agreements generally, were this trade agreement to fall as a result of the EU not ratifying it, how practical would a renegotiation be? Obviously, this deal has been many years in the making. Would it effectively signal the end of the trade agreement in real practical terms?

I have another point to make to Ms Drisdelle. This trade agreement has to be ratified by the parliaments of all EU states, and some regional parliaments within certain states, so there is still a bit to go in respect of it. Even a regional parliament could throw the deal out and cause the whole thing to fall. Is that something about which the Canadian Government is concerned? Is it proactive in selling the benefits of this agreement in the other EU states? Is the Canadian Government conscious of this issue and is it being proactive about it in other EU states, because it may be that Ireland will not have to deal with this issue at all if some regional parliament rejects the agreement?

Ms Suzanne Drisdelle: I thank Deputy Haughey. I apologise if I have pronounced his name incorrectly.

Deputy Seán Haughey: No, Ms Drisdelle got it right.

Ms Suzanne Drisdelle: The Canadian Government has a job to do, in Canada and in Europe, to raise awareness of the benefits of CETA. There is a lot of news in the media today. It does not always trickle down. It is a comprehensive agreement. Even here in Ireland, we have reached out to many organisations across the country, including chambers of commerce, Enterprise Ireland, IDA Ireland and several business associations in the areas of meat, dairy, whiskey, spirits, food and beverages, to understand the needs of Irish companies but also to ensure that small companies in particular are aware of the benefits of CETA. The Government is absolutely behind the benefits to Europe and to Canadian companies and it has an interest in making sure that is communicated to companies on both sides of the Atlantic.

With regard to ratification, this is a complex and comprehensive agreement. We definitely respect the democratic process of each member state and the discussions that form part of those. As was alluded to earlier, if we are talking about opening it up again, I will say that this is not the time to throw away this opportunity. Right now, Ireland faces the impact of Brexit and needs to address the economic recovery. This is absolutely the time to use frameworks such as CETA to enable companies across all sectors, and especially small companies, to build resilience. As part of our outreach, we spoke to Irish whiskey producers and to the Irish whiskey organisations. Through audits and complementary dialogue and through CETA, they uncovered pricing issues in Canada that were resolved as of 1 April this year because of CETA. Irish whiskey is now more competitively priced in many Canadian provinces because CETA allowed that to happen. There are many other benefits, including benefits for the meat and dairy industries. The data speak for themselves.

This is not the time to consider reopening such a comprehensive agreement. Canada and the EU, including Ireland, are very like one another in our shared values and common approaches. If we cannot figure out a way to create a structure and framework for trading, who else can? We are aligned and like-minded. This negotiated arrangement is based on our common values. We have addressed many of the issues that have been raised and we continue to do so. I refer to issues involving labour and the environment. The Canadian Government and Canada are definitely behind this. We allow member states to carry out their own democratic processes for ratification. I hope that answer's the Deputy's question.

Chairman: I thank Ms Drisdelle. Does Mr. Collenette want to come in again?

Mr. Chris Collenette: I believe Ms Drisdelle has done a wonderful job so, no, unless Deputy Haughey wants to hear from me.

Chairman: That is what we like to hear.

Deputy Seán Haughey: That is fine. I thank the witnesses very much.

Senator Sharon Keogan: I apologise, I thought the Chair had forgotten about me. I thought the Chair was doing a round-table and assumed he was coming to me.

Is it correct that CETA clarifies that governments may change their laws regardless of whether this may negatively affect the investment or the investor's expectations of profits? CETA includes an appeals mechanism which allows the correction of errors. Whom are these appeals made to?

With regard to the geographic indicators, Irish whiskey is mentioned a lot. I note Cyprus has turned down this particular agreement because of its cheese. I wonder what protection measures are there for Irish whiskey and Irish salmon. We have a number of products with PGI status. Will they also be given some sort of special status within this agreement?

Chairman: There are a few technical questions. Maybe we will start with Mr. East, followed by Mr. Collenette.

Mr. Reuben East: I thank Senator Keogan for the questions. Maybe I will start with the appeals mechanism the Senator asked about. As I understand it, the Senator asked to where does one make an appeal. The answer is that there is an appellant system in the investment court system, ICS, itself. The parties appoint to a roster members to be on that tribunal. In other words, there is a tribunal at first instance and in the event of an appeal, it goes to the appellate tribunal under the system itself.

Senator Sharon Keogan: Who appoints that appeals tribunal?

Mr. Reuben East: Both parties appoint the members of both tribunals through a roster system. For example, in Canada, it is an open call. It is an open and transparent system. One can apply to be a member. Of course, there is a series of attributes that one looks for in arbitrators - knowledge of public international law, experience as a judge and things of this ilk that would make one qualified. That becomes a permanent system in the sense that the arbitrators are paid a stipend for that as opposed to on a case-by-case basis and that can turn into a salaried system. The idea is one has a permanent system of both at first instance and appellate tribunal. I hope that answers that question. If the Senator could repeat for me the first question she asked because there was something there too that I should answer.

Senator Sharon Keogan: Is it correct that CETA clarifies that governments may change their laws regardless of whether this may negatively affect the investment or the investor's expectations of profits?

Mr. Reuben East: Indeed, it is correct. Under Article 8.9, paragraph 2, "the mere fact that a Party regulates, including through a modification to its laws, in a manner which negatively affects an investment or interferes with an investor's expectations, including its expectations of profits, does not amount to a breach of an obligation under" the agreement. That is a clear direction to a tribunal on how to interpret that.

Senator Sharon Keogan: What about geographic indication?

Ms Suzanne Drisdelle: I will answer that, Chairman. I thank Senator Keogan as I was hoping somebody would ask this question. It is one of the technical areas I am more familiar with. When we were engaged with several Irish business groups last fall, this issue came up, and especially with regard to Irish cream liqueur which has a protected geographic indication in Canada. We engaged several legal counsel and lawyers in Brussels and Canada to help Irish producers understand how they can action their geographic indication, GI, protection in Canada. What came out of that discussion - we reached out directly and had a round-table with several producers - is that the EU system for geographic indications is different from Canada's and there had been an understanding that it worked the same way. It is through our intellectual property, IP, system in Canada and it requires the producer to action its rights under the geographic indication. For example, with Irish cream liqueur, what is required is for those producers to produce a cease and desist letter or to address the matter with producers in Canada. GIs are not very common in Canada and we are not as familiar with them. We do not have a history, as the European Union does, with GIs. This is why, in many cases, it would be just a matter of informing producers in Canada, who may not even be aware that they are imitating something that is protected, such as Irish cream liqueur in this case. In many jurisdictions where this has been the case and a letter was sent to the producer in Canada, it usually helped in over 80% of the cases.

This is an area in which we are well versed. We are very keen to ensure that Irish producers take advantage of this and as has been mentioned, there are others that will probably request GI protection. We would be very pleased to work with producers to help them understand the Canadian system so they can action their rights under that system.

Mr. Chris Collenette: In the context of the first question, I invite the committee to take a look at Article 8.12. Not only does CETA not prevent countries from creating or changing their laws, it specifically states that a covered investment can be nationalised or expropriated on a number of bases, including the public purpose, under due process of law and in a non-discriminatory manner.

Senator Lynn Boylan: I thank the witnesses. I have heard that Canada and Ireland are like-minded. I had the privilege, when I was an MEP, of working with Ms Maude Barlow, the chair of the Council of Canadians, and speaking with representatives from Canadian trade unions who had concerns about CETA. I do not wish to tell the committee how to do its business but it would be interesting to hear from the Council of Canadians.

My questions are for Mr. Collenette in particular. I had a look at the membership of the ICBA advisory council. In the interests of transparency, we know Irving Oil, a Canadian oil and gas company, has a refinery in Cork. Vermilion Energy is now the main shareholder of the Cor-

rib gas field operation, with almost €700 million worth of assets in that field. Vermilion is also the company that threatened the then French environment minister, Mr. Nicolas Hulot, with a billion dollar lawsuit when he wanted to phase out oil and gas. The chilling effect of that legal threat meant that the French Government changed its plans and decided to not phase out oil and gas until after 2040. It is also worth noting the language used by Vermilion in that threat to the French Government is similar to the language used in Article 8.10 of CETA, which concerns the right to fair and equitable treatment. It is also correct that under Article 8.10.2(f), there can be an amendment post-ratification as to what constitutes fair and equitable treatment.

Another advisory council member is the law firm of Arthur Cox. Its website refers to the successful defence of multiple judicial reviews against the Corrib gas fields. The advisory council has quite a number of other law firms, including William Fry, corporate lawyers for dispute resolution for oil and gas development, and Pinsent Masons, which is one of the top 100 law firms in the world, with energy again listed as a specialty. There is also Eversheds Sutherland, which boasts 70 arbitration lawyers who regularly act for the energy sector in high-profile disputes and which believes gas to be an important component in the future energy mix, promising to do what its clients need wherever needed. It also lists how arbitration is a preferred mechanism due to the advantage of enforcement over domestic court systems.

In the interests of transparency, is it not fair to say the ICBA and the members of its advisory council, given their make-up and legal-heavy membership, would have an interest in ratifying CETA with the ICS mechanism in place? That is as opposed to just allowing the provisional application of the deal to continue. That was the case in the Energy Charter Treaty. Some signatories to that treaty provisionally ratified it for decades and have continued to be able to operate.

Mr. Chris Collenette: I thank the Senator for the question. First, we are a business association, an association of businesses. Yes, our interest is to ratify CETA, and what is on the table is ratification of CETA with the ICS. Nobody is proposing that it be ratified without it, or at least not now. I wish to note that I am here and that this is a voluntary organisation with a voluntary director. A number of times when we have surveyed all our members, not just those the Senator mentioned, CETA ratification has come up. That is the case for all our members, including those that employ the approximately 25,000 Irish people here. I should note that the Canada Pension Plan, CPP, the Canadian Government pension plan, made up of Canadian individuals owns the majority of the Corrib gas field, if I am correct, and Vermilion is an operator. I also note that the operation employs approximately 400 people, supporting families in the member's constituency of Mayo. Is that correct? I believe that is the employment level of Vermilion in Mayo.

I cannot get into the specifics of the case with regard to Vermilion and the French Government other than to say I do not know it. However, I presume that it felt that it had a case to take and it did so. That could be done as part of an ICS or it could be done in French courts as well. I again note that the ICBA is a business association. We represent businesses doing business between the two countries, including many SMEs and many Irish businesses. We cannot specifically say that we only want to ratify CETA because of the ICS or because of the composition of some members of our advisory board.

Mr. Reuben East: I will respond quickly on a few points. I thank the Senator for the questions, especially the one on fair and equitable treatment. I do not often get to talk about fair and equitable treatment in detail as a technical person, but I enjoy the opportunity to do so. I will say something about this standard and the way it was drafted under CETA, which is quite different from the old ISDS model. I believe it is important. Usually the fair and equitable treatment

provision has a very opaque reference, because it is a customary international law standard. If one looks at the oil treaties, there is mention of customary international minimum standard of treatment or fair and equitable treatment, but no description of what the content is. The EU and Canada were very deliberate in setting out exactly what the customary international law standard is and listed the aspects. These are things such as complete denial of justice, for example, no ability to have any recourse before a domestic tribunal, or manifest arbitrariness. Things such as this are listed under article 8.10.2. The parties were quite deliberate in setting these out.

As to the question relating to paragraph 3 of that provision, as it is a customary international law standard it will evolve from time to time. The parties have an ability through the specialised committees to meet and, as needed, to basically acknowledge this. However, even without that, a tribunal could take notice of a customary international law standard and how it evolves. What is innovative here is that the parties are in control of this. The parties set the standard and they can then indicate if it is evolved or not. That is quite different and I argue that it provides a narrower ability to use this provision.

On the Senator's point about concerns, I cannot speak on specific cases. Some of the concerns she has raised in respect of specific cases relate to the old ISDS model. CETA does something quite different by, for example, giving a specific direction in the text to tribunal members and by having a frivolous claims provision that can lead to the early dismissal of claims, which vastly reduces costs to the state in defending these claims. There are joint interpretations to clarify the meaning of certain provisions, including in respect of the environment, labour and so on. These are binding on tribunals and there is an appellate system that does not usually exist under these old ISDS claims. These are reforms that respond somewhat to these concerns. They were acknowledged and addressed by the parties in my submission.

Chairman: I thank our Mr. East and the Senator.

Senator Lynn Boylan: Can I clarify one point please with Mr. East, please, on Article 8.10 in CETA. It is correct to say that the Oireachtas would have no further oversight of any amendments to what constitutes fair and equitable treatment. Once we ratify it, Irish legislators will have no further oversight of those amendments; it would involve just the EU and Canada.

Mr. Reuben East: I cannot speak to how the EU would manage this as this is a matter for the EU and its member states to decide the process of how they might like to do this. Canada uses its federal government to negotiate and enter into agreements. In some of the committees, there is not only federal participation but also provincial government participation, for example, in respect of mutual recognition agreements, which usually fall within the provincial competence. That depends in the case of Canada and I cannot speak as to how the EU and its member states would organise that.

Chairman: I call Deputy Whitmore followed by Senator Higgins.

Deputy Jennifer Whitmore: I thank the Chairman and the witnesses. I thank the Chairman for allowing me to sit in on this very important and interesting discussion. I have a number of questions, first, for Ms Drisdelle, and hopefully then I can then come back with a question for Mr. Collenette.

We are hearing today of the benefits of the ICS. Last week we had experts in who said that they were very concerned about the system. From speaking to my constituents, there are many concerns among people as to what we might be signing up to not just for the immediate future

but for a 20-year period into the future. Much of this will come down to when the deal is ratified and in operation and to the interpretation of the text and how court systems interpret what is within the agreement. Taking that into consideration, do our witnesses accept the concept of the chilling effect and that the very nature of this agreement could impede a government in making a policy decision without being fearful of what that decision could incur by way of compensation costs or through the ICS? Regardless of the outcome of such a court process, the potential is there to impede a government in making a decision for the benefit of its own people. We were given a few examples last week such as Romania withdrawing from the nominations of the UNESCO site because of a gold mine in its territory and the risk relating to an environmental permit. A number of cases show that the chilling effect is real. Do our witnesses believe that this is something that could impact on an Irish or Canadian Government in respect of CETA?

Second, there has been discussion about SMEs as it is not just the large corporations that are covered under this agreement. The 2019 judgment of the European Court of Justice raised a concern that the cost of these courts under the ICS would be prohibitive for SMEs. It stated: "The extent of the financial risk undertaken by bringing proceedings before the CETA Tribunal may accordingly be such, for a natural person or a small and medium-sized enterprise, as to deter that investor from initiating the proceedings." Was this something about which the witnesses were concerned?

I will revert with a quick question for the representative of the ICBA.

Ms Suzanne Drisdelle: I thank the Deputy for her questions. As my colleague, Mr. East, mentioned, many of the examples we have heard of companies suing various jurisdictions were based on a different system, namely, the ISDS. The ICS will replace it with a more predictable and accessible mechanism. I can understand there being an emotional concern and a fear of the idea of a foreign company somehow having an effect on local laws, but as we continue to reiterate, CETA protects the domestic government and ensures it can regulate in its own right on these matters of substance and importance in the public interest. As such, I do not see there being a risk of a chilling effect.

In terms of SMEs, I am hearing an assumption that the ICS will encourage arbitration or somehow bring more cases against states. I am not sure why that is. If cases come about and there is a need for them to be dealt with and discussed, the ICS provides a better system, one with more predictability and several processes it must go through, including vetting to ensure that frivolous claims are not put forward. This will reduce the cost for SMEs. Without the ICS, the SMEs will be left with fewer tools. If one is dealing with 27 different jurisdictions, what one needs to do is not as obvious or predictable and there is no consistency. The ICS benefits SMEs and their ability to access an arbitration system and have it be predictable and consistent in a way that deals with different concerns. I do not see that as being an issue or the chilling effect as being a serious concern.

Deputy Jennifer Whitmore: I thank Ms Drisdelle. I will ask a quick question of Mr. Collenette that is similar to what Senator Boylan asked. Is there a list of his organisation's membership on its website? I believe access can only be gained to a small number, so I would be interested in knowing which bodies are members and in which sectors they are.

Mr. Chris Collenette: That would probably violate GDPR. Every member of our advisory committee and patron of the organisation is listed on the website. We would have to survey the rest of our members if we wanted to release the list, although I do not believe many would have a problem with it. The Deputy would not like me to break our GDPR requirements by disclos-

ing a list of members.

Deputy Jennifer Whitmore: No, but Mr. Collenette is representing a significant number of bodies in this regard and it would be interesting to know which.

Mr. Chris Collenette: Sure.

Deputy Jennifer Whitmore: For the past six months, there has been a significant campaign by his organisation to engage with senior members of the Government. At the-----

Mr. Chris Collenette: All of which was done in a voluntary capacity.

Deputy Jennifer Whitmore: Absolutely.

Mr. Chris Collenette: We are not under a mandate to get CETA through. This is something on which our members have made representations to us.

Deputy Jennifer Whitmore: If they are engaging with our Government through Mr. Collenette's organisation, that makes it important for us to have an understanding of who they are. The ICBA registered its lobbying efforts on the register, which is welcome.

Mr. Chris Collenette: It is not just welcome; it is part of the democratic process and a requirement.

Deputy Jennifer Whitmore: Absolutely. Mr. Collenette was clear on that. I am wondering whether any commitments were made during those meetings with Government officials or Ministers that were held late last year in the third and fourth quarters regarding CETA? I know his primary efforts were in respect of expediting the ratification of CETA. Was Mr. Collenette surprised at how quickly CETA came onto the Dáil agenda late last year? Many of us in the Oireachtas were surprised when CETA came out of the blue onto the agenda, and that there was quite an effort to get it through the Dáil system and process very quickly. Was Mr. Collenette surprised when this happened?

Mr. Chris Collenette: I will take that those questions in turn. First, we have not represented to expedite CETA. It has been provisionally applied since 2017. Our position is that we want to get on with it and get it over the line. We are not trying to rush it through; our position is that it is best for the economy to do so, for all the great reasons we have listed. No commitments were made; it was only agreed that CETA was something in which the Government saw value. With regard to the manner in which it was introduced before Christmas, I agree with Senator McDowell, who wrote an article on the issue some time ago. I believe that 55 minutes was too short a period of time in which to discuss a Bill of this nature. I was glad to see that it made it onto the Oireachtas schedule, but we certainly did not advocate for it to be advanced in a more expedited manner than one would hope for, if that is clear.

Deputy Jennifer Whitmore: Can I-----

Chairman: Sorry, Deputy, I am going to have to-----

Deputy Jennifer Whitmore: Can I just come in on something really-----

Chairman: I have given the Deputy an extra two minutes, two more members have indicated that they wish to speak and there are only eight minutes remaining. I will bring in Senator Higgins-----

Deputy Jennifer Whitmore: I just want to clarify something here. In the register on the lobbying front-----

Chairman: I call Senator Higgins----

Deputy Jennifer Whitmore: ----what is the purpose of getting-----

Chairman: In fairness, I have given the Deputy nine minutes. I will bring in Senator Higgins-----

Deputy Jennifer Whitmore: -----the Irish to ratify sooner rather than later than the other 14 states?

Chairman: -----followed by-----

Deputy Jennifer Whitmore: "Expedite" is the word that I would use.

Chairman: -----Deputy Ó Murchú.

Mr. Chris Collenette: "Expedite" refers to a period of seven years. It has been provisionally applied since 2017. Perhaps the Deputy is correct. We would like it to be ratified, but are we talking about 100 years for it to be ratified or getting it done?

Chairman: Apologies. I am bringing in Senator Higgins, who has been waiting patiently. We are really strapped for time.

Senator Alice-Mary Higgins: To do the preliminaries, I have also spoken at the Thomas D'Arcy McGee Summer School. I am very interested in our common and shared democratic values. However, the fact is that the values that Canada and Ireland, or indeed the EU, might share are not values that need to be shared by corporations. They have different sets of values. That is why in general, globally, we have seen a shift away from international arbitration mechanisms. There are still arbitration mechanisms in new deals that are being agreed, but they are mechanisms for arbitration between the parties that actually sign the deals. It is arbitration, for example, between Canada and the EU, that does not include private corporate investors who do not sign up to the deal or have obligations under the rest of it. That is what we have seen in the case of the US.

The question has not been answered in respect of the fact that we have seen a new level of partnership between the US and Canada immediately following changes in deals involving the removal of investors from the arbitration mechanisms. I know that private investors are still included in relation to Mexico. That is a key point. It is also worth noting that during the renegotiation, NAFTA continued to apply. Therefore, the provisional application can continue while we discuss these measures. It was much faster - just two years. When there is not a controversial element, it seems that trade deals get negotiated much quicker.

On the common values piece, Mr. Collenette has been very clear that his interests are business interests. That is what he will represent. In that regard, I am concerned when I hear about the lobbying. When I think about this consultation and mediation phase that is going to happen when an ICS case might be taken. I am concerned that during the mediation phase we will see these parties engaged in the very high level of access that they have had in relation to this in mediation. Is that where the chilling effect happens? Is that the point where it will happen most, where there is mediation and states back down on their roles?

I have three very specific questions for Mr. East. We have all looked at the CETA tribunal. The term, "fair and equitable treatment" is still very wide; it does include reasonable expectations. In Article 8.9, it is not the mere fact alone that constitutes the breach but the mere fact plus the fair and equitable treatment. It is interesting that Article 8.9.4, in respect of the removal of subsidies, specifically states there will not be an obligation on compensation for investors. Do the witnesses agree that the direction given to the ICS on the removal of subsidies indicates that compensation might not be expected but that the direction in respect of regulation does not give any insurance that compensation might not be expected? That is the key piece of the chilling effect.

Mr. East said that Canadian companies are not suing under the energy charter but Vermillion Energy, which is a member of this Ireland Canada Business Association, is suing and has threatened to sue France specifically under the energy charter. Will we see that used? There is a question on legitimate expectation. Mr. East stated that companies should expect the same treatment domestically as internationally. Is it not the case that the compensation which will be given to companies under this international arbitration is far higher than what they would expect nationally because it includes those legitimate future expectations?

Mr. Reuben East: Senator Higgins had a very specific question on Article 8.9 and a particular subparagraph of it. I agree with her interpretation in respect of the piece on subsidies. It states "For greater certainty, nothing in this Section shall be construed as preventing a Party from discontinuing the granting of a subsidy" and there is no compensation that goes with that. However, I respectfully disagree with her interpretation on Article 8.9.2, to which she compared it. Senator Higgins knows it well but I will read it for everyone's benefit. It states "For greater certainty, the mere fact that a Party regulates, including through a modification to its laws, in a manner which negatively affects an investment or interferes with an investor's expectations, including its expectations of profits, does not amount to a breach of an obligation". If it does not amount to a breach of an obligation, then there is no compensation that goes with it. I suggest that paragraph and paragraph 4 amount to the same thing. If there is no breach of obligation then there is no compensation - paragraph 4 speaks to compensation - and one arrives at the same thing.

Senator Alice-Mary Higgins: However, if there is a change in law and it impacts on the fair and equitable treatment of a company and its reasonable expectations under Article 8.10, it is entitled to seek compensation. I imagine that Mr. Collenette might have that view. He certainly seems to have it.

I refer to the diplomatic work that we are doing together on things such as sustainable development goals and climate change goals. Does Ms Drisdelle see a tension when the goals that countries might share are at odds with those which corporations might have? Does she think that is the case with the Keystone pipeline or cases such as that of Vermillion Energy and France?

Ms Suzanne Drisdelle: How many minutes do I have to answer?

Chairman: Ms Drisdelle has a few minutes, it is okay. Technically we are supposed to finish in 60 seconds but I am conscious that Deputy Ó Murchú also wants a supplementary, so I ask Ms Drisdelle to keep it brief.

Ms Suzanne Drisdelle: In response to Senator Higgins, I would like to highlight a few things. One is that Canada, Ireland and the EU share climate change and environmental goals.

We have exactly the same goals. While it is true that Canada is very resource dependent and its economy has traditionally been based on the energy sector, I reiterate that with Canada's strengthened climate change strategy, announced in December, and for the past ten years, the transition to the carbon economy is happening. It is something that companies are involved in whether they like it or not. The energy transition in Canada does involve the oil and gas sector. It is making investments in new technologies for increased efficiency, reduced emissions and alternative forms of energy. This must happen in collaboration with the sector. The chapters in CETA that touch on environment include one in which various climate commitments are regularly discussed within the context of CETA and its joint committees. We are with the EU and are in step with each other in addressing climate change. I do not see CETA as being contrary to that.

Chairman: I ask Mr. Collenette to be very brief as we have three minutes left. I will then bring in Deputy Ó Murchú for a final supplementary question.

Mr. Chris Collenette: I do not have anything to add unless there is a specific question.

Senator Alice-Mary Higgins: I have a question on the consultation and mediation aspect. Does Mr. Collenette feel it is a tool that will be used when there is a threat of the ICS in respect of the chilling effect by, potentially, members of his association?

Mr. Chris Collenette: No.

Deputy Ruairí Ó Murchú: I mentioned the Energy Charter Treaty, which Canada has not been signed off on the basis of the ISDS element. People are stepping away from it for fear of corporations suing.

Regarding article 8.10, enough has been said regarding fair and equitable treatment but creating a legitimate expectation. The chilling effect is what we are still talking about. That is obvious. We have positivity from the deal that has been done and its provisional application. Is there any major obstacle to this going on? If there is time, can Mr. East give an example of the direct actions not open to companies, with reference to my earlier example of fracking?

Mr. Reuben East: I thank the Deputy the question. Concerns about the old ISDS system were mainly raised by civic society groups. I participated in the negotiations with the EU and it is really important to emphasise that these concerns were taken very seriously. Not only did we acknowledge them, we made some pretty substantial revisions to the investment chapter to address those concerns. Canada and the EU very much turned their minds to the question the Deputy posed when we negotiated CETA in the investment court system. The agreement is very clear. It bears repeating that various chapters, not just the investment chapter, guarantees parties the right to regulate in the public interest, for example, in areas such as the safety of agricultural goods, public services, environment, culture, health and safety and labour protection, among others.

That is supplemented by specific exceptions and reservations taken by the parties in the form of Annexe 1 and Annexe 2. I mention them because it essentially means that, for certain areas, certain obligations do not apply. Essentially, they have carved out public policy space. This is quite important because those areas cannot be the subject of a dispute. This is an important way to buttress this potential concern about a chilling effect.

CETA does not, in my view or in Canada's view, prevent the Irish or Canadian Governments from regulating in the public interest nor does it require that an investor be compensated simply

because a government measure has affected its expectation. It also does not allow an ICS tribunal to require that a government change its laws, regulations or policies. These are all very important elements in this ICS that are quite different from the old ISDS model. In my view, they will act as safeguards in respect of the concerns about the old ISDS model.

Deputy Ruairí Ó Murchú: I am not sure we have full protection as regards the chilling effect. I asked whether there is any obstacle to continuity of the provisional application. A large number of countries, particularly in the EU, are not making major inroads on ratification of the ICS.

Mr. Reuben East: Obstacle in what sense?

Deputy Ruairí Ó Murchú: Is anything stopping this provisional application continuing in the near future without ratification of the ICS?

Mr. Reuben East: On provisional application, it is very important to say again that we very much respect all member states' democratic processes on ratification. This includes Ireland. We are a partner in the agreement and, naturally, we would like to see it ratified sooner rather than later. As to the ratification process, we respect Ireland and the process it is going through.

Chairman: We have run out of time. I thank the witnesses very much for their engagement. This has been a very worthwhile session. I know members were very anxious to underpin the conversation and engagement today by emphasising the importance of the relationship, historical and otherwise. In our recent history, in 2011, the Canadian Government signed off on 10,000 visas during very dark days in this country when many young men and women had to emigrate. The relationship is important. We have evidence of this and no doubt the continued relationship will be positive.

Many questions were raised today and there are still a lot of questions. It is very important that we perform our parliamentary and democratic role in asking them. Gabhaim buíochas leis na finnéithe agus leis na baill arís. Guím ádh mór orthu amach anseo.

Ms Suzanne Drisdelle: I thank the Chair and committee members.

The joint committee adjourned at 11.40 a.m. until 9.30 a.m. on Tuesday, 20 April 2021.