DÁIL ÉIREANN

AN COMHCHOISTE UM POIST, FIONTAIR AGUS NUÁLAÍOCHT

JOINT COMMITTEE ON JOBS, ENTERPRISE AND INNOVATION

Dé Máirt, 17 Eanáir 2017

Tuesday, 17 January 2017

The Joint Committee met at 4 p.m.

MEMBERS PRESENT:

Deputy Niall Collins,	Senator Aidan Davitt,
Deputy Tom Neville,	Senator Paul Gavan,
Deputy Maurice Quinlivan,	Senator James Reilly.
Deputy Noel Rock,	
Deputy Bríd Smith,	

In attendance: Senator Alice-Mary Higgins.

DEPUTY MARY BUTLER IN THE CHAIR.

Comprehensive Economic and Trade Agreement: Discussion

Chairman: Apologies have been received from Deputy Stephen S. Donnelly and Senator Gerald Nash.

At our meeting on 8 November 2016 it was agreed that three EU proposals - COM (2016) 443, COM (2016) 444 and COM (2016) 470 - concerning the comprehensive economic and trade agreement warranted further scrutiny and that the committee would begin its consideration with a briefing by officials of the Department of Jobs, Enterprise and Innovation. I welcome Mr. Philip Kelly, assistant secretary; Ms Lorraine Benson, principal officer; Mr. Karl Finnegan, assistant principal officer, and Ms Caroline Kiernan, higher executive officer, to discuss the topic with us. I thank them for the briefing material they have provided.

Mr. Philip Kelly: I thank the joint committee for the invitation to attend to discuss the EU-Canada comprehensive and economic trade agreement, CETA. As members will be aware, at the 16th EU-Canada summit in Brussels, on 30 October 2016, EU leaders and the Canadian Prime Minister signed the comprehensive economic and trade agreement. The landmark deal which runs to some 2,500 pages represents a comprehensive transatlantic trade agreement which seeks to eliminate or reduce trade barriers in virtually all sectors of EU-Canada trade. Our most recent experience of applying a comprehensive trade agreement with one of the third countries, South Korea, has seen a 25% increase in trade. If this trade intensification were to be replicated in the case of Canada on foot of full application of the CETA, Ireland could expect exports to rise by €500 million per annum. The total value of Irish exports to Canada is €2.3 billion per year, with the total value of imports being €729 million. We expect these levels to increase as the CETA covers not only the traditional tariffs and quotas which apply to goods but will also free up trade in services.

Ireland is the fourth largest recipient of Canadian foreign direct investment. The stock of Canadian direct investment in Ireland amounted to approximately €11 billion at the end of 2015. With Canadian companies already investing actively in Ireland and employing some 2,800 people, an increased focus on bilateral trade and targeting inward investment from Canada can lead only to further growth.

Almost half of the benefits anticipated under the CETA are expected to be in the services sector. There is a significant opportunity for Ireland, given its strengths in services. It has been particularly successful in expanding its share of the world's services market in recent years; in fact, our share has tripled in the past 15 years. Services exports account for more than half of all Irish exports. In the case of goods exports, the CETA will save on duty costs, as 99.6% of all industrial tariffs will be eliminated on entry into force of the agreement. Firms exporting from Ireland will also benefit from the recognition of product standards and certification, saving on "double testing" on both sides of the Atlantic. This is of particular benefit to smaller firms which can ill afford to pay twice for the same certification test.

The CETA provides for a significant opening up of agrifood trade. Ireland successfully campaigned for a low beef import quota from Canada to the European Union, thereby safeguarding our important EU market in this area. We were also successful in securing the multi-annual phasing in of the additional quota granted. On the other hand, in terms of our offensive interests, we have secured full unrestricted access for Irish beef and other meat products to the Canadian market.

In recent years Ireland has developed an important pigmeat export trade to Canada and there is now potential to develop the export business for Irish beef and lamb products also. The removal of the Canadian import tariff of 26.5% will benefit Irish meat exporters. The CETA also provides significant new opportunities for the Irish dairy sector. In addition, there are a range of sectoral opportunities for Irish companies arising from greater access to the Canadian market, including in financial software, telecoms, digital media, agricultural machinery, the life sciences and medical devices.

On public procurement, for the first time, Canadian provinces, territories and municipalities will open their procurement markets to third countries. Canada will also create a single electronic procurement website that will combine information on all tenders which will correspond to existing intra-EU arrangements. This will greatly facilitate the effective access of firms to procurement opportunities in Canada. Making the trading landscape easier is particularly important for SMEs enabling them to internationalise and grow exports. Trade barriers tend to disproportionately burden smaller firms which have fewer resources relative to larger firms to overcome them.

As well as providing new market opportunities for Irish firms, the CETA has the potential to provide consumers, businesses and individuals with a greater choice of quality products at lower prices.

As Members will be aware, the Council's decision of October 2016 provides for the provisional application of the CETA, such application being a standard approach in trade agreements. Procedurally at this point, provisional application requires a favourable vote in the European Parliament plenary session in February - this is likely to occur on 17 February - following a recommendation from the International Trade Committee of the Parliament, INTA, on 24 January. However, members may be aware that certain provisions of the CETA will not be applied provisionally. Most noteworthy among them are those relating to investment protection and investment dispute settlement. The European Union and Canada have also agreed a legally binding joint interpretative instrument that was added to the CETA to provide further assurances on public services, labour rights, water services, sustainable development, environmental protection and investment.

Members of the committee will also be aware that the opinion of the European Court of Justice has already been sought on the EU-Singapore free trade agreement to determine the limits of the European Union's competence in the matter of trade and foreign direct investment. The opinion of the Advocate General was published on 21 December 2016. It indicated that the EU-Singapore free trade agreement could only be concluded by the European Union and the member states acting jointly, in other words, it was a mixed agreement. The opinion contains the Advocate General's view of the law and recommends to the court how it should decide the case. The court has yet to make a decision, but it is due to do so in early 2017. Ireland argued at the court that the Singapore agreement was mixed. That has also been our position on the CETA. Accordingly, in order for the CETA to be fully ratified by the European Union, it will have to be approved by all 28 member states in line with their national legal procedures. In Ireland's case, the agreement will be brought before the Dáil for ratification in due course.

Enterprise Ireland is consistently working with client companies in focusing on enhancing their competitiveness, capability and levels of innovation to assist them to diversify into new markets. Enterprise Ireland stands ready to support Irish companies in seeking to take early advantage of the opportunities presented by the CETA and will be supporting additional trade events in Canada in the coming year to help Irish businesses to enter the market or expand their

presence, including in particular, through a trade mission later this year to be led by the Minister for Jobs, Enterprise and Innovation, Deputy Mary Mitchell O'Connor.

The agreement is very important to Ireland. The CETA and the European Union's other trade agreements will help to open new markets, break down barriers and provide opportunities for Irish firms. The importance of applying and exploiting existing agreements and accelerating negotiations on new trade deals at EU level and in the WTO is underscored by Brexit. Trade diversification has been a consistent national policy objective. While progress has undoubtedly been made, the need to further reduce our dependence on a limited number of markets and, in particular, the United Kingdom, will be a key element in mitigating the negative impacts of Brexit. Continued access to the European Union's network of trade agreements is just as important and a significant competitive advantage for Irish exporters and investors seeking to establish in Europe. From experience, we know that an open global trading environment works for Ireland. The combination of export-led growth and foreign direct investment has transformed Ireland's economy in the longer term and more recently played a key role in national economic recovery. With a small domestic market, further expansion in other markets is essential to our continued economic growth.

That concludes my opening statement. Together with my colleagues, I will be happy to answer questions members may have.

Chairman: I thank Mr. Kelly for his statement. I now propose to take questions from committee members, so perhaps each member would ask three questions initially, and if anybody would like to come in again at the end, I will allow that, in the interest of trying to give everyone a fair chance.

Deputy Tom Neville: On what Mr. Kelly said about the Singapore agreement, that Ireland argued at the court that the agreement was mixed, this has been likewise our position on the Comprehensive Economic and Trade Agreement, CETA. Will Mr. Kelly elaborate on that?

Mr. Philip Kelly: We argued that member states had a role in the ratification of these trade agreements because the subject of the trade agreement was not entirely within the competence of the EU and some aspects of the deal were within the competence of the individual member states. That was the case, and that is why the Government intervened in the European Court of Justice, ECJ, case concerning the Singapore deal, and that is the current judgment of the Advocate General. We had a similar position in the Canadian deal. With respect to opening up services markets, concessions are made to allow people to come to Ireland or the EU or to go to Canada to try to promote their services or deliver a services contract. If a person got a contract to deliver ICT services or something, he or she would get temporary permission to enter Canada to deliver that service. We maintain that control of our national border outside of the Schengen Agreement is a matter for the member state in Ireland's case, and therefore that falls to the national competence. That is just one example of an area of the agreement over which we want to retain control and insist that member states get to ratify, not just the EU.

Deputy Maurice Quinlivan: My party is opposed to the CETA trade deal, for a number of reasons. We have a motion that is working its way through the Dáil, and it is hoped we will discuss that in the Chamber shortly. I emphasise again the request I have made before that we invite other stakeholders to this committee to discuss CETA. These would include the trade union movement and the environmental sector.

Chairman: We can discuss all that in private session, if that is okay.

Deputy Maurice Quinlivan: I will return to that. I have a number of questions based on the fact that there is considerable concern across Europe. Thousands of people have campaigned against this and there have been public protests and petitions against it. The Committee on Employment and Social Affairs of the European Parliament actually requested that this be rejected. It said that CETA must be decent in terms of "job creation, balanced wage increases and expanding enterprise possibilities. However, regarding decent job creation, empirical evidence based on real-world models indicates at best marginal overall increases for EU employment of no more than 0.018% over a 6 to 10 year implementation period".

Mr. Kelly raised the issue of the beef sector specifically. Given that 5% of Canadian farmers produce 50% of Canada's agricultural output, how are Irish farmers going to compete with hormone injected, capital intensive factory farms housing up to 20,000 animals? That is the major concern that I have been hearing from farming organisations.

Mr. Philip Kelly: On competing, it should be recalled that the EU has made no concessions on the standards of food safety. There is no question of hormone or GMO beef being admitted to the European market. The quota that would be conceded to Canada and phased in, as proposed, over six years is for hormone-free, GMO-free beef. As members will be aware, that line of production has different economies of scale and costs than producing with hormones or GMOs. There is no lessening of the food quality or safety standards in the beef that would be admitted to the European market, and that tends towards levelling the costs or any cost disadvantage caused by the size of the Canadian industry and Europe. The corollary is that Irish farmers will have unrestricted access to sell premium beef products into the Canadian market, whereas the Canadians are subjected to a quota in Europe.

Chairman: Tariff free?

Mr. Philip Kelly: Tariff free.

Deputy Maurice Quinlivan: In the agreement there is no specific chapter on small and medium-sized enterprises, SMEs, and that is a concern I would have. Many of our exporters are smaller SMEs, and they would be competing with massive companies coming the other way. That is a concern I would have, that there is no specific chapter to support SMEs.

Mr. Philip Kelly: One of the key areas is public procurement. Canada has very restricted access to public procurement, only traditionally at the federal level. As mentioned, but maybe I did not read it out in my opening remarks, public procurement at the provincial level and at the local government level in Canada is twice as big as the federal market in public procurement, and all three markets, federal, provincial and local government will now be open to EU producers, including Irish firms, to bid for. The concession by the Canadians of doing what we do in Europe, which is having a single website with all tenders above a particular threshold listed centrally, makes it easier for Irish SMEs to bid for Canadian public procurement. That is just one example.

The other issue is if we try to simplify the customs procedures, take out the tariffs on goods and make it easier for people to enter Canada to deliver their services, there is no reason SMEs would not benefit all the more, given that the costs they bear in overcoming regulatory barriers is disproportionately greater than large firms who have large technical departments to be able to negotiate these non-tariff barriers.

Senator Paul Gavan: Mr. Kelly will not be surprised that I am going to raise the issue of

the investment court system, ICS. What is the justification for having the ICS as part of the deal? Can any examples be provided where non-EU investors have had their rights trampled by the EU courts? Frankly, if there is not a justification for it being in the deal then we should not have agreed to it. The idea that democratically elected governments can be sued by private corporations because they might have the temerity to raise the minimum wage, for example, is absolutely shocking. Perhaps I am missing something. I would like to know what justification Mr. Kelly sees for the ICS, and perhaps he could give me some examples of where the ICS has worked well for democracy anywhere around the world.

Mr. Philip Kelly: The ICS should be looked at as a standard approach which would apply in all trade agreements. It could be said that Ireland has benefited greatly from foreign direct investment. We have done that in the absence of an investment agreement with anybody. Our EU partners have 1,600 investment agreements with countries around the world, so in some cases inward investors into Europe might be concerned about how they would vindicate their rights, how they would protect their intellectual property and how they would extract their capital. There may be concerns about some countries regarding the separation of powers, the protection of intellectual property and a whole range of issues.

It would also be very difficult to ask a Canadian investor to invest in Europe and deal with 28 different constitutions and legal systems of jurisprudence. Looking at Europe as a single market, a Canadian investor would like to invest in a place with a single set of investment protection rules. The investment protection rules proposed in the ICS are not the law of the European Union and they are not the law of Ireland. They are an arbitration mechanism under this agreement which can be opted for. A Canadian firm owning a firm in Ireland can sue the Government in the morning. If the Government causes harm to a Canadian firm here, it can go to the Four Courts and sue it. The investment protections apply a common set of rules in 28 member states that would be applied by a single panel of people as an arbitration mechanism and as an alternative to using the domestic courts. A Canadian investor unhappy with the actions of the Irish Government can go to the Four Courts and sue the Government and find that the Minister or the regulatory body was acting *ultra vires* or that the action taken against it was unconstitutional. From our perspective, the outcome of going to the investment court system, ICS, was that the person was deemed to have been harmed and due compensation. There is no question of the ICS panel overturning an Act of the Oireachtas or finding something to be unconstitutional. It cannot do so. It cannot even make a finding that an Act is legal or illegal. It can only state that, based on the terms of reference of the agreement, an investor was treated in an unfair or inequitable way and discriminated against. It can state the investor was damaged and what the level of compensation should be. As I said, there is no question of it being able to overturn any Act of the Oireachtas or a decision of the Minister or a public body.

Senator Paul Gavan: I thank Mr. Kelly for his detailed reply. In the questions I asked I sought examples where non-European Union investors had had their rights trampled on. Will Mr. Kelly give examples of where the investor to state dispute settlement, ISDS, mechanism has worked well for a democracy?

Mr. Philip Kelly: The ICS system, as proposed in the Canadian trade deal, is completely new. It will be fully transparent and the people who will hear cases will be qualified to be judges in their home member states. They will be selected by lottery, as will the chairperson of the relevant panel, and all of the proceedings will be in public. All of the documents will be made public and proceedings may be entered into by third parties such as non-governmental organisations and other interested parties. It is a completely transparent mechanism with pro-

fessionally qualified persons who, as I said, will be eligible to be judges in their home countries. The system is not in operation anywhere else. It is a new model proposed in the CETA, one the European Union is advocating should be adopted on a global basis.

Senator Paul Gavan: Is it not a variation of the ISDS model?

Mr. Philip Kelly: It is an evolution of the former ISDS model.

Senator Paul Gavan: Will Mr. Kelly give an example to show where the ISDS model has worked well for a democracy?

Mr. Philip Kelly: I cannot, but I cannot give examples to show where it has worked negatively either.

Senator Paul Gavan: Given that hundreds of law professors, the German Association of Judges and the European Judges Association have all indicated that the ISDS model contravenes EU law, how can Mr. Kelly assure us that rulings of the arbitration panel will not overrule EU law?

Mr. Philip Kelly: Because they will not represent and will not be adopted as the law of the European Union or member states. There is no proposal from anybody in Canada or Europe to do so. Our best legal advice from the Attorney General is that our interpretation is correct and that the agreement sets out that the arbitration system will not be able to decide on the legality or otherwise of the measure complained about. All it will be able to do is decide whether somebody under the terms of the agreement has been treated unfairly and what damage has been caused.

Deputy Niall Collins: I will pick up on the last point. It will still be open to an investor to have recourse to the courts in the first instance if he or she goes through an arbitration process but does not achieve the desired result. I assume it will still be open to the investor to revert to member state courts.

Mr. Philip Kelly: As I understand it, in order to avail of the ICS, one must waive the right to enter into national courts or any other international dispute resolution body.

Deputy Niall Collins: Therefore, it is one or the other.

Mr. Philip Kelly: Yes. It is seen as an alternative to pursuing a case in domestic courts.

Deputy Niall Collins: In his opening statement Mr. Kelly did not cover the Department's role in the process to date. Will he provide some detail of the meetings Department officials have had with various sectoral and interest groups? What has their input been on behalf of Ireland as a member state?

Mr. Philip Kelly: I will begin to do so and will ask my colleague, Ms Benson, to contribute also.

The European Union gave the Commission a mandate in 2009 to open the negotiations with Canada and in anticipation of that happening, the Department engaged with industry stakeholders on our priorities in the negotiations. I was not at the Department at the time. The negotiating process is conducted by the Commission which, chapter by chapter, in the intervening years made and received draft offers with the Canadians. The Commission guided how it put forward or responded to offers with the trade policy committee on which Ms Benson is Ireland's rep-

resentative. It guided the Commission in deciding how it should put forward or accept offers. Successive colleagues in the trade area in the Department would have liaised with business and agriculture interests, in particular, on offers the European Union would exchange, sector by sector, with the Canadian Government.

Ms Lorraine Benson: In the past year I have had meetings with the Irish Environmental Network, the trade union movement, IBEC, the Irish Exporters Association and the Ireland Canada Business Association. In the past two years we have certainly been open to meeting anybody who has wanted to meet us, whether it be an individual or those who represent smaller groups. I have covered the broad representative groups to give the committee an idea of who has been involved.

Mr. Philip Kelly: For several years we increasingly featured Canada in the programme of trade missions and events Enterprise Ireland organised in anticipation of the agreement coming into force to ensure Enterprise Ireland clients would be aware that tariffs on their goods to Canada and barriers to services would fall. Therefore, as a result, we are well positioned to take advantage. We have tried to alert people, including through agencies, to the opportunities we see arising.

Ms Lorraine Benson: Together with the Ireland Canada Business Association, tomorrow we will hold a round-table discussion in the Department on the precise opportunities there will be for Irish businesses. As well as the Minister, we will have present representatives from the association, Enterprise Ireland and IDA Ireland.

Deputy Niall Collins: On the organisations or stakeholder representative organisations which have met departmental officials, which of them have taken a position of outright opposition to the agreement?

Ms Lorraine Benson: I cannot recall anybody who is specifically opposed to the trade agreement. Everybody we meet is pro-trade, although there are specific concerns. Early in the negotiations we spoke about tariff rate quotas for beef. Based on the arguments we made at the time, there were concerns in the agriculture sector, but we negotiated successfully and managed to get a good result.

Deputy Niall Collins: As Ms Benson stated, one of the issues raised by farming organisations was the additional quota to be received by Canada. The delegates have stated there will be a multi-annual phasing in. What is the timeline in that respect?

Ms Lorraine Benson: The first phase will begin in year one and will range up to seven years. For example, the full quota for fresh and frozen beef and veal will only apply in year seven of the agreement, 2024.

Deputy Niall Collins: The witnesses might not be able to be exact about the timeline for this agreement because much of it is outside all of our control. What kind of timeline is currently envisaged for the approval of member states? What is the current position with regard to Brexit and how the UK will play into the agreement? The UK is talking about having the majority of the Brexit process formally wrapped up within two years of the triggering of Article 50. Can the UK hold up the agreement during that time? Will the agreement become part of the Brexit negotiations? Will the UK be able to extend the timeline for the implementation of CETA?

Mr. Philip Kelly: I do not think so. The UK Government, along with the Governments of

the other 27 member states, approved the provisional application of CETA at Council level. I would guess that it is anxious to see the provisional application in place. As the Deputy is aware, the UK Government has spoken about transitional arrangements. It is probably anxious to avail of all the benefits of all the trade agreements, including on a transitional basis, pending the conclusion of its own agreements with third countries. The UK Government is already a party to the provisional application. The national ratification process, for which there is no time limit and which normally takes three or four years, is the reason the application is provisional. If the agreement is approved by the European Parliament in a plenary vote in February, we will move almost immediately to provisional application, immediate entry into force and the imposition of a 0% rate of tariffs on 99% of industrial goods. The clock will begin to run in the agriculture area, where there will be special phasings over a long number of years. For the next two years, at least, the UK will have the full benefit of provisional application, obviously minus the investment protection or the investment court system, which will not come into effect until the agreement has been ratified by all 36 or 38 member states. It is difficult to know whether the absence of the UK from the final ratification of the agreement would be material. Countries on the other side, such as Canada, might regret the concessions they made when they reached agreement on the basis of being able to access a market of 500 million people when the market is no longer of that size. Our instinct is that the UK will be delighted to benefit from the provisional application for as long as possible.

Chairman: Before I call Deputy Smith, I ask those with mobile phones to turn them off or to enable flight mode on them. I did not make such a request at the beginning of the meeting, but I am doing so now because I have been informed that a little interference seems to be coming from somewhere.

Deputy Bríd Smith: I thank Mr. Kelly for his presentation. He has painted the agreement in glowing terms by speaking about the possibilities for this country and putting a very positive spin on it. He has alleged that it could make Ireland even more profitable and competitive and could lead to the creation of many more jobs and opportunities here. I assume he is aware, as those of us who are informed about the agreement are, that a report published by the employment committee of the European Parliament plays down the opportunities that will come out of CETA, especially by comparison with what we have heard in Mr. Kelly's report. I would like him to comment on the report. I assume he is familiar with it. I will quote some of the aspects of it that jump out at me. I refer particularly to the predictions in the report about what CETA will bring to the EU. I ask Mr. Kelly for his comments on the matter. The European Parliament committee has looked at this in detail, as I assume the departmental officials have done. According to the committee's report, "at best [there will be] marginal overall increases for EU employment of no more than 0.018% over a 6 to 10 year implementation period". The report refers to a "forecast [of] actual job losses of 204,000 for the EU as a whole". The figures for profits are slightly better, with the report envisaging "a 0.66% increase in favor of capital owners". As an opponent of CETA and as a member of a trade union, Unite, and a political party that opposes the agreement, I ask Mr. Kelly to address that.

I am one of the many people who have lobbied, campaigned and protested against the nature of this type of agreement, as other speakers have already mentioned. We contend that CETA places at risk the safeguarding of workers' rights, environmental rights and local labour law and strengthens the protections for international capital, employers and companies. I suggest Mr. Kelly admitted that when he said the courts, through the system of investor-state dispute mechanisms, will protect Canadian people who want to invest in Ireland. He intimated that at present, someone who is hurting because of our laws can go to the Four Courts and take a case

against the Irish Government. I would like him to spell out to me what he means by "hurt". Under CETA, we could be sued in the international courts system not because we have hurt people or impinged on their profits, but because they have lost out on a reasonable expectation of profit. They might not have lost a single penny, a single job or a single boat or airplane, but they might have lost out on a reasonable expectation of making more money. On that basis, we are allowing questions to be raised with regard to our labour and environmental protection laws.

A Bill proposing to prohibit fracking in Ireland has been tabled by a Fine Gael Deputy and Government supporter and is to be considered on Second Stage in the Dáil shortly. Lone Pine Resources sued the Canadian Government to the tune of $260 million because it did not want to see fracking banned in the province of Quebec. Would it not be a great irony if a company from Canada were to take Ireland to court for not allowing fracking in Leitrim? This Dáil democratically decided to express its opposition to fracking by supporting a Bill that was proposed by a Fine Gael Deputy just before Christmas. I mention that in the context of Senator Gavan's contention that there is a contradiction in all of this with regard to how we deal with democracies. This proposal undermines local and international democracy. This Parliament has decided that it does not want fracking because it is concerned about the poisoning of our groundwater and about climate change. We do not think we need to extract any more fossil fuels from the earth.

We have listened to the many local opponents of fracking and decided that we do not want it. I am concerned that a company, or an individual who feels he is being hurt because he could have had a reasonable expectation of profit in County Leitrim, will be able to take us to one of these courts and sue us for millions of euro. Companies have previously sued states on the basis of a loss of reasonable expectation. This has happened to some of the poorest countries, including Ecuador, and to some of the richest countries, including Canada and the US. Under this system, decisions on such cases will not be made by a friendly court that represents citizens, but by a court that is structured to represent the interests of business. The interests of people and the environment are being undermined for the interests of profit. I know that is a mouthful, but I would like Mr. Kelly to address it so that we can get a holistic view of what is going on.

Chairman: Would the Deputy like Mr. Kelly to respond to the questions she has already asked before she asks any more questions?

Deputy Bríd Smith: I do not mind. We can go back and forth.

Chairman: There is quite a lot in the questions the Deputy has already asked.

Deputy Bríd Smith: Okay.

Mr. Philip Kelly: There are many committees in the European Parliament. Just as the employment committee has made a recommendation against CETA, the environment committee has made a recommendation in favour of CETA. We have yet to see what the recommendation of the trade committee will be. The European Parliament as a whole will have its say in a plenary vote. It is not my place to arbitrate between different committees of the European Parliament. I will mention two committees, however. The environment committee has come out in favour of CETA and the employment committee has come out against it.

Deputy Bríd Smith: The context for my reference to the EU employment committee is that Mr. Kelly is speaking to the employment committee of the Oireachtas.

Mr. Philip Kelly: Absolutely, but the Deputy has also raised environmental issues like fracking and the threats posed-----

Deputy Bríd Smith: It is a question of the number of jobs that may or may not be created.

Mr. Philip Kelly: Absolutely, and I am going to address that now. I use a whole load of different models to analyse the potential benefits of trade agreements. I am not familiar with the economic modelling used by the employment committee of the European Parliament. I am familiar with the economic modelling that the European Commission uses. It is the same modelling that we rely on domestically here - the computable general equilibrium model. It considers trade and the composition of trade between all member states. It applies changed scenarios and tariffs, changes to technical barriers to trade to existing trading relationships and tries to model what would happen. Under that sort of modelling our anticipation is that CETA would support additional job creation and higher value-added or higher-paid jobs in the economy.

We are the subject of constant churn between agriculture, manufacturing and new areas of the services economy. That transfer of employment between sectors is well established. We know that trade agreements only generally provide a small increment to that transfer. We expect that a new trade deal would see certain sectors of the economy attract more capital, be more profitable and create more jobs. If we had a closed labour market, one might see employment fall in other areas of the economy as employment was created in higher value-added sectors of the economy. We do not have a closed economy in the European Union and therefore, we anticipate that we will see increased job creation in higher value and more sustainable jobs in the economy in the long term. That is our national estimation of what CETA would do for us. It would create more sustainable jobs in exporting firms in the economy. We know that exporting firms ride out recessions better and avail of product and service innovation better and that, on average, firms pay better in the exporting part of the economy. We just have to differ in terms of the views of the employment committee of the European Parliament and rely on the sort of the analysis we do, and that the European Commission has done and which, in the case of the European Commission, is in the public domain.

The Deputy asked me questions on expectations of profits. To clarify, the reason that companies or somebody would feel hurt is established under CETA's terms. It states that one has to be discriminated against or to have been the object of unfair inequitable treatment. CETA defines all of that in terms of denial of justice in criminal, civil or administrative proceedings, as well as a fundamental breach of due process in judicial proceedings or a lack of transparency. Other grounds are if the treatment one has received has been manifestly arbitrary, if one has been the object of targeted discrimination on manifestly wrongful grounds such as gender, race or religious belief or if, as an investor, one has been the object of abusive treatment, duress or harassment. These are the grounds and that is the sort of negativity whereby somebody might complain that their intellectual property rights or other rights have been infringed or expropriated by a state.

On the issue of profit expectation, the agreement explicitly states that a reduction of somebody's expectation of profits is not a breach of the investment protections of the agreement. If, however, one were the subject of a harmful act by a government, how would we value one's business or investment? There are standard accounting treatments by which businesses are valued in terms of their assets. One can value their property, vans or machinery or one might value their contracts or distribution channels. Anybody valuing a business does so on the basis of it being a going concern as, otherwise, one is just buying a set of assets. Under any accounting treatment when one values a business or a business that has been damaged, it is considered to be a going concern. As part of that one considers the return on the capital employed. One would consider future profits and whether its income stream had been damaged by the harm com-

plained about. There is nothing exceptional about looking at an investment whether it is a stock on a stock market or buying a business. One values the business based on its income stream. The expectation is not of somebody who might invest in Ireland and the profits he or she might have made but of somebody who has an investment, can prove he or she was discriminated against and damaged and who can point to a reduction in the value of his or her investment or business using a standard accounting technique that would value a business as a going concern.

Deputy Bríd Smith: I apologise for interrupting but I refer to a scenario in which a company like Lone Pine Resources already was based in Ireland and had an interest in extracting gas, for example, in the Corrib field but wanted to extract shale gas in Leitrim. A ban on fracking was introduced by the Government and by the elected Parliament. Is Mr. Kelly saying such a company has no right to sue this country for banning fracking?

Mr. Philip Kelly: Yes.

Deputy Bríd Smith: Is that what Mr. Kelly is saying?

Mr. Philip Kelly: Yes.

Deputy Bríd Smith: That is what Mr. Kelly is on record as saying.

Mr. Philip Kelly: Yes, I understand that.

Deputy Bríd Smith: Is Mr. Kelly telling me the company has no right to sue this State for creating a situation in which it cannot trade or manufacture?

Mr. Philip Kelly: I am saying the company has no right to establish rights in Ireland. If it had a legitimate business that was licensed or had relevant permissions and was operating in Ireland and was the object of discriminatory treatment that it could prove had resulted in harm being done to it, then the company could have a case in the Four Courts on any day of the week or could take a case under the investment courts system.

Deputy Bríd Smith: Yes.

Mr. Philip Kelly: However, such a company cannot establish rights. If it is not legal in Ireland, then a business cannot establish a right to it. The agreement explicitly states there is no prohibition on the Government regulating in respect of the public's interest. The agreement commits both the European Union and Canada to protect the environment, forest species, indigenous people, aquaculture and to working to enforce all of the commitments in the Paris Agreement etc. Everything in the agreement says there can be no diminution in environmental or labour standards. Special committees have been set up under the agreement to monitor the situation on an annual basis. There is also a provision for the Government and the European Union to intervene with Canada if it was thought that Canada was lessening environmental standards either to create jobs, generate trade or secure investment and the same would apply to the European Union. Everything written down, both in the minutes of the Council in the joint interpretative instrument and in the agreement, is in exactly the opposite direction. There is no diminution in employment or environmental standards and in fact mechanisms to police same that involves civil society.

Deputy Bríd Smith: I apologise for taking up loads of time. I propose that we invite Trócaire, Attac Ireland and some of the trade unions to address us.

Chairman: We can discuss the Deputy's proposal in private session. We invited the De-

partment's officials to attend here today to discuss the three COM proposals that we, as a committee, must deal with. We will discuss the work programme for the rest of the year in private session, which is when the Deputy will have an opportunity to discuss her proposal.

Deputy Bríd Smith: Yes. I am unfamiliar with the procedures.

I have more questions for the witnesses. We have been given a list of reservations. Can we apply reservations? How was the list of reservations compiled? Was it done in conjunction with the previous employment committee in the last Dáil? Were elected Deputies or Senators consulted? Why is the list three pages in length while Germany has submitted a list that is 30 pages in length? Has Ireland been over-generous in terms of CETA trade developments? Has Ireland been conservative in not protecting its forests, water, education and health? Many sectors have not been mentioned in the trade agreement thus allowing *carte blanche* liberalism to run through public services in particular, as well as environmental protection. How was the list compiled? Who was involved in compiling same? Were the democratically elected Deputies of Dáil Éireann consulted?

Mr. Philip Kelly: I might begin and my colleague, Ms Benson, will contribute later. We had offensive and defensive interests in the Canadian negotiations. We had a very particular interest in the outcome on beef products. In approaching the negotiations we had to prioritise the asks in deciding what we wanted to get out of them. It is true to say the Irish economy is extremely open. We do not have a lot of technical barriers to trade, nor do we have a lot of shelters. That is why all of the global ranking bodies rank Ireland's economy as open and rank it for the ease of doing business. We were not moving forward in a protectionist way and trying to shelter many parts of the economy. That is why, generally, we might have fewer things we are trying to shelter because we see the benefits of competition and open trade. That is also why Irish firms benefit from access to other markets.

I will ask Ms Benson to comment specifically on how we put the list together and how it can be read relative to the German or any other list.

Ms Lorraine Benson: The Deputy has a short list of reservations and I know which page she is looking at. It might be helpful if I was to supply the committee with the note I have that explains where the reservations are situated in all of the annexes. To give an outline, there are broad EU reservations which cover water and public services.

Deputy Bríd Smith: I understand that. Drinking water only.

Ms Lorraine Benson: In the text of the agreement there is a specific article on water services. Water is given the highest possible protection and recognised in the trade agreement. This derives from the general agreement on trade and services. The European Union and many other states around the world have this general reservation. A reservation is an exception in the general competition rules such that a member state does not have to open its market in these areas. There are specific exceptions included in the treaty and there is also a set of annexes. The first annexe is about existing reservations the European Union has. It is a general set of reservations and covers business, health, transport, cultural, education, air transport and energy services, to mention a few. It is important to read Ireland's reservations together with the broad EU reservations. Ireland has five specific reservations. There are specific reservations in the areas of agriculture, mining and quarrying, legal services, veterinary services and ship registration.

I will speak about their method of compilation. The trade agreements have been negotiated

over many years and the previous one to which we referred, a comprehensive trade agreement, is the trade agreement with South Korea. The reservations we included in the South Korea agreement carried forward into the current set of negotiations. The European Commission lifts the reservations and we then enter into a consultation process with it. For that process we consult all Departments and have a set of interdepartmental committees at which we discuss each reservation. Each Department will tell us if there are particular interests or concerns in its sectors, for example, the health, veterinary and pharmaceuticals sectors. Through this broad interdepartmental process we gather our reservations and submit them to the European Commission.

Deputy Bríd Smith: Does it come back to a committee such as this at any stage for an application?

Ms Lorraine Benson: To date, it has not come to the committee. We did not do that.

Deputy Bríd Smith: I see that as a weakness. I thank Ms Benson for her answer. I find it very interesting that one of our reservations is in the law trade. It always seems to be ring-fenced and looked after, as it is in this agreement.

Ms Lorraine Benson: The Deputy is absolutely correct, but all 28 member states have reservations in respect of the legal profession because in each country there are specific requirements for registration and training. It is not that Canadians are prevented from coming here or to the United Kingdom or Belgium to practise law, but if they do, they have to apply to the equivalent of the Bar Council or the Law Society. All member states have this arrangement and reservation included in the treaty.

Chairman: I will move on because we still have three members indicating.

Senator Aidan Davitt: I thank Mr. Kelly for his presentation. Ireland is an open economy and Mr. Kelly has hit on a number of points. I am curious about where he believes the greatest pitfalls for Ireland are in this deal since he has spent so much time dealing with it. I want to glean something from his experience of it. As he has outlined, it has taken more than seven years for it to be comprehensively ratified and it still has a long way to go. To expand on that conversation, I have a question about the situation in America, one of our larger export markets. How realistic are the claims that America will agree to a trade agreement with Britain in a number of weeks? The delegates have great experience. As they have dealt with the CETA and everything else, I am curious about their opinions on both of these matters.

Mr. Philip Kelly: We have not identified pitfalls in the CETA agreement, save to say if we did not have it, those involved in some sectors of the economy would be denied access to markets. As I mentioned in my opening remarks, we are all the time calling on firms to diversify and get into new markets. One part of the equation is the work Enterprise Ireland does in helping firms to identify target markets. The other part is identifying the tariffs their goods will face in these markets and what other behind the border barriers they will face. We have to work on the terms of trade, as well as facilitating individual companies. The world around us is negotiating trade agreements. Will we step aside from taking part when our entire output requires the export of beef, services, pharma-chem products and ICT equipment? We are exporting far more than the domestic market could support in these areas of specialism and high value. The danger to us lies in not taking part and not liberalising and taking advantage of the opportunities when the economy and individual firms have shown how well they can compete. The danger posed by the agreement is that Irish firms will be out-competed by other member states and their companies or will not be equipped to avail of these market opening opportunities. It will come

down to individual firms identifying market opportunities in Canada in public procurement for software, medical devices etc. My confidence comes from the Irish firms which throughout the huge recession managed to lead recovery through export-led growth. It will involve not being left behind. Trade openness tends to stimulate innovation in the economy. The pressure of competing with other countries and firms to sell in Canada will stimulate innovation and, therefore, sustainability in Irish firms. There is a feeling of being left behind rather than of being exposed to very specific threats arising from the Canadian deal.

On the US-UK deal-----

Senator Aidan Davitt: I asked for a reason.

Mr. Philip Kelly: -----I would have thought that was absolutely impossible.

Senator Aidan Davitt: I will tell Mr. Kelly why I asked for a reason. Are the procedures of the European Union too stiff? They have taken too long to get this far with Canada. We are talking about opening markets and progressing. When we heard yesterday and the day before about America and Britain doing a deal within two weeks, it was hard to fathom.

Mr. Philip Kelly: It depends on what a deal represents. If we wanted to do a deal on tariffs on goods, which are very low generally, we could go to zero tariffs on many non-sensitive goods very quickly but the real advantage to sophisticated economies is being able to sell services to each other. That requires recognition of professional qualifications and that we allow people move across the Border to look for and deliver those services. It requires mutual recognition of safety testing, product standards and a range of very complicated issues over which sometimes, including in the United States, central government does not have control. In other words, there are state level regulators who determine the standards. For the United States Administration, either in public procurement or regulatory standards in the US, to Sherpa and all of the state level interests, it is extremely complex. It is possible to do a deal relatively quickly with the United Kingdom, perhaps in a short number of years. The issue would be whether it was a comprehensive deal covering services as well as goods and whether it could cover investment and investment protection. It depends on what is in the deal.

Senator James Reilly: I thank Mr. Kelly for his presentation. One of the areas that has been of particular concern is public health policy. That is the tip of an iceberg that has been reflected in some of the commentary here already in terms of the concerns about this deal that unforeseen advantage may be given to outside multinational companies that could take advantage of the situation here to our detriment. To cut to the chase, I would be grateful if Mr. Kelly would outline the position, taking specifically public health policy on tobacco. From what he said already, it would appear to me that if something is banned in this country and across the European Union, or even not across the entire EU, our laws prevail and nothing within this agreement can undermine those laws. Mr. Kelly's colleague, Ms Benson, is nodding in assent but it would help everybody if Mr. Kelly could lay that out in terms of the tobacco industry in particular in which there are several actors. There is a market here already. They will now have to comply with new arrangements to do with plain packaging, to mention but one aspect that may come down the track in the future. He might highlight how he would see those provisions that we have put in our public health policy to protect public health from the deadly threat tobacco represents, with 6,000 Irish people dying every year from tobacco related illnesses and 700,000 people dying across Europe, not being undermined. That would reassure me, and I am fairly reassured already. While I accept all the arguments Mr. Kelly has made, it would also demonstrate clearly how this agreement cannot undermine our laws, our Constitution and any

policy this Oireachtas would put into law, and that it is not discriminatory against one provider of a service.

Mr. Philip Kelly: One does not have to go far overseas to see that. One only has to look around the European Union, whether it is to do with plain packaging or something else, to see there is a diversity of views. However, to refer to this deal, the agreement sets out the European Union and member states' right to regulate in the public interest and specifically talks about doing that with regard to the promotion of public health, social services, public education, safety, environment, public morals, social or consumer protection, privacy and data protection, and cultural diversity. That is in the joint interpretative declaration which, as the Senator knows, has the same status as the Comprehensive Economic and Trade Agreement, CETA, under the Vienna Convention. The treaty states that the Government has a right to regulate in the public interest but there is always a debate internationally about what is the public interest. In the past, we and the Senator have fought that fight both at the World Trade Organization, WTO, and elsewhere where people tried to challenge issues like plain packaging. It is important that that is seen to be in the public interest and that there is an evidence base for those actions. As far as I am concerned, however, both in the text of the agreement and in the joint interpretation that Canada and the European Union have put as an integral part of the agreement, they restate for the avoidance of doubt the state's right to regulate in the interest of the public and, in particular, public health. I do not see scope for that issue to be unravelled as it stands in Ireland.

Chairman: I call Senator Higgins and thank her for attending today. She is more than welcome.

Senator Alice-Mary Higgins: I thank the Chairman. I appreciate the opportunity to be here and thank Mr. Kelly for his presentation. Before I ask a question, I want to pick up on one point. We have been hearing of the benefits but Mr. Kelly mentioned our own research. The only research we know we have in Ireland is that Ireland asked, regarding the Transatlantic Trade and Investment Partnership, TTIP, which is a similar agreement, that the Copenhagen institute would do research. The benefits it found for Ireland, in terms of economic growth, were 0.01% per year. When the European Commission and the Canadian Government did research into the potential benefits of CETA, they came up with 0.01% of economic growth as the potential economic benefit. It is important that we keep those figures in mind because some of the figures we saw relating to South Korea etc. may have been slightly inflationary. The figures from the European Commission are much closer to the figures we saw from the employment committee. They are quite low compared with the figures relating to South Korea.

Similarly, further research would be beneficial in that small firms will benefit. Except with regard to assumed benefits in terms of navigation of paperwork etc., it would be good to look to similar agreements between equal partners such as the North American Free Trade Agreement, NAFTA, and the extent to which small firms have or have not benefited versus larger corporations. If Mr. Kelly had information on that, I would be very interested to see it.

I want to ask two questions, the first of which concerns the negative list mentioned. It is quite a short list for Ireland. Germany has an 18-page list, but what is interesting about the German list is that it also excludes a large number of areas of legal provision and it states that those areas are not affected or impacted by the Bill. It seems Germany took quite a different approach in terms of exclusions. While Mr. Kelly mentioned the European exclusions, it is interesting that other countries still felt they needed to put in additional exclusions. A question arises in that regard from which it would be important to learn.

There are also concerns regarding some of the European level exclusions Mr. Kelly mentioned. Has a proofing exercise taken place with regard to each of those in terms of our public services in each of the areas mentioned, for example, transport, health and others? There has been some ambiguity about what is considered a service of general interest and whether the services we provide meet the standards for exclusion. In some cases recently, Ireland has been told that we do not meet the standards for exclusion, perhaps because there is a private actor also operating in an area. The proofing exercise that might have taken place in regard to that is important.

There is also concern about what is called the ratchet clause, a phrase not in the Bill, in that if an area is in public delivery currently, it would seem, from looking at CETA and the text, that if an area were privatised, it would be very difficult to return it to public delivery. It seems the only changes that can take place regarding service delivery are to increase the openness and private access. What would be the impact of reversing a sector, as it were? How would Mr. Kelly see that as being possible? For example, in terms of experiments such as those that have taken place in the Department of Social Protection where it has outsourced certain contracts and services, if it wanted to take that back into public delivery again, how might that work?

I believe this is important, and I would like to hear Mr. Kelly's comments on it, because the negative list is a new process that has never been done previously. We have never had a negative list system whereby that which is not explicitly excluded is included. We are in a new zone here. It is important to recognise this is not standard practice but a new practice. I would like to hear the thoughts of the witnesses.

With regard to the investor court system, the witnesses mentioned that it is an opt-in. It is, of course, not an opt-out so states that sign up, if this is finally ratified, will not have an option to opt out from it. When the witnesses say it is a choice, the choice is only on the part of the corporation as to whether or not to choose to access this mechanism. It is not a choice for states. It is also important to clarify that indigenous companies would not be able to access this mechanism within Ireland and, similarly, citizens and governments would have no access to it. This is entirely a mechanism which can be initiated and activated by corporations and companies, if I am correct, whereas the interpretative instrument mentioned by the witnesses and the committees mentioned do not have any of the same teeth. The witnesses can perhaps correct me on that.

The interpretative instrument was added to with the very belated inclusion of the Vienna convention and its committees some seven hours before the proposed signing. What mechanisms do the witnesses believe states would have through those committees if there were concerns in regard to issues such as the environment, employment rights and equality rights? What would be the enforcement mechanisms? We know the mechanism of the investment court system, which has the power to demand compensation, as the witnesses put it very explicitly. Nobody is suggesting that states would lose the right to regulate but the key point is that states having the right to regulate would now come with a compensatory cost. As was said, future unearned profit may not be the reason that can be put forward but another reason may be put forward. If we look at dispute mechanisms around the world, the evidence is that the bar has been quite low. With regard to climate change, during the case currently being taken against the United States in regard to the oil pipeline, it was stated that citing climate change as an issue of public interest was considered an inadequate defence and that the company should still be compensated. A case is ongoing in that regard.

Chairman: The Senator might conclude.

Senator Alice-Mary Higgins: I want to ask one concrete question in regard to the European Court of Justice, ECJ. What is the witnesses' view in regard to whether the investor court mechanism be referred to the ECJ and, if not, why not? It is an important check and balance that would give assurance to the population. What is Ireland's position? Between provisional application and final ratification, many states have been demanding an opening of the CETA text and a re-examining of the investor court system. Is Ireland in support of that, is it blocking it or is it neutral on it? What is Ireland's position in the discussions around changes to the text in regard to the investor court system?

Mr. Philip Kelly: To go back to the joint interpretative instrument, there is a section on public services which specifically states there is no obligation on member states to open up services currently being delivered by governments to the private sector. Paragraph 4(c) states: "CETA will not prevent governments from providing public services previously supplied by private service suppliers or from bringing back under public control services that governments had chosen to privatise." Therefore, that is explicitly stated in the joint interpretative instrument in the agreement on the public services. No barrier to the-----

Senator Alice-Mary Higgins: Would that be subject to compensation?

Mr. Philip Kelly: No, it is a term of the agreement that the agreement provides no barrier. It is an interpretative clause so there is no issue of compensation arising.

The Senator asked about opt-in and opt-out. We are trying to encourage people to invest in our countries and, to do that, we are offering them a level playing field across the 28 member states in terms of the rules they might play by, and we are offering them a compensation mechanism if they are wronged. I accept this is not available to domestic firms, which would have recourse exclusively to domestic law. As we are trying to entice inward investment, we are providing a special mechanism to them rather than offering them 28 different constitutions and national laws by which they might try to vindicate their rights. The Senator is right that it is confined in that way. It is not optional. The option is whether to avail of it or to go to the domestic courts. If a firm chooses one, it cannot do the other.

On the issues of climate change and so on, there are again specific commitments in the agreement that both the EU and the Canadian Government will honour the Paris Agreement and will not reduce environmental standards. As I mentioned, the environment committee in the European Parliament made a recommendation in favour of the application of CETA and there are specific mechanisms whereby, if there is an allegation that somebody is reducing environmental standards in order to secure trade or inward investment, the other party to the agreement has a right to raise those issues. There is an annual mechanism by which the parties would review the application of these terms and, if there was a dispute over the facts, they would appoint an independent panel of third-party experts from third countries who would provide advice as to whether the allegations of lessening of environmental protections were valid.

Senator Alice-Mary Higgins: And new standards?

Mr. Philip Kelly: If I can finish the point, the only way environmental standards, labour standards or any other standards in the EU will be changed is if the European Commission, member states in the Council and the European Parliament agree to it. I do not have any evidence of member states or the European Parliament moving to reduce safety standards, food standards or labour standards. There is an awful lot of scrutiny of such standards so I am not anticipating there would be a huge race to the bottom in standards, given the huge institutional

checks and balances in Europe supporting the highest standards, and the mutual commitments of Canada and the member states in the agreement to maintain the highest level of standards and to co-operate in environmental fora and in the ILO, and to adopt ILO conventions to maintain the highest employment standards.

In regard to the European Court of Justice and the reference to the investment court system, ICS, our understanding is that it is not incompatible with the treaties. This agreement is an Act under the treaties; it is not an extension of the European treaties. In the Lisbon treaty we gave competence for investment and trade to the EU, and this is an Act the EU is doing under those powers. We are not extending the treaties and this is not another Lisbon treaty; it is just an Act under the treaties.

As the Senator may be aware, the Belgian Government has committed to referring the ICS mechanism to the ECJ to ask about its compatibility with the treaties. I presume it will follow through on that commitment.

Ms Lorraine Benson: We are awaiting the ECJ ruling on Singapore.

Mr. Philip Kelly: When it follows through on that commitment, we will get the answer to that issue of compatibility. However, I am not aware of any other member state asking to re-open the ICS text pending such a reference by the Belgian Government or the final determination in the case of the Singapore agreement coming from the court.

I am not privy to discussion domestically in government as to our position in regard to ICS and the ECJ. As is standard, if the Belgian Government is taking a case, EU member state governments may choose to join that action or oppose it. I have not had consultation with anybody as to what Ireland's position might be. Our current position is that we do not see that the ICS is in contravention of the European treaties.

Chairman: I call Senator Gavan and I must ask him to be brief.

Senator Paul Gavan: My question is simply to reference a point made by Deputy Bríd Smith. With regard to the negative lists - the list of sectors excluded from this very important treaty that has been negotiated for eight years - how can the witnesses justify the complete lack of democratic oversight in that at no point during those eight years have people come into this committee or into the Dáil and said: "This is what we are thinking and these are the sectors we think need to be excluded". The witnesses are here to reassure us that the democratic rights of our people will not be trampled down by this deal. However, the witnesses themselves have conceded that in eight years, there has been no democratic oversight of which sectors are excluded or included. I am flabbergasted.

Mr. Philip Kelly: I am not sure that we have agreed that. The process by which exclusion lists are drawn up begins with proposals that come from the Commission about what Canada is looking for or what the EU might offer. Our internal process is to go across Government to Departments and the Ministers of those Departments to ask about the compatibility of the demands or the offers to be made to the Canadian side in this instance. The issues that have arisen are ones in which we have been advised by Departments and their Ministers - as the same legal entity - about areas in which we should have reservations. As far as we are concerned, we have dealt correctly with other Departments and their Ministers in terms of their interests and their representation of the national interest.

Senator Paul Gavan: But no national democratic forum has been consulted?

Mr. Philip Kelly: We deal with the Government.

Chairman: I thank Mr. Kelly, Ms Benson, Mr. Finnegan and Ms Kiernan for their assistance in briefing the committee today and for answering all of the questions that were put to them.

The joint committee went into private session at 5.31 p.m. and adjourned at 6.03 p.m. until 4 p.m. on Tuesday, 31 January 2017.