



Regulatory Impact Assessment

Proposed Ratification of the Comprehensive Economic and Trade Agreement between the EU, its Member States and Canada (CETA)

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1. Description of Policy Context

1.1 Introduction and Context

The EU-Canada Comprehensive Economic and Trade Agreement, commonly known as CETA, is one of the EU's new generation of progressive free trade agreements. CETA is designed to benefit EU and Canadian companies through improved trade and investment flows in support of increased employment for EU and Canadian citizens. The elimination of tariffs, the reduction in trade barriers and simplified customs procedures that flow from CETA all make it easier and cheaper for Irish companies of all sizes to export to Canada and vice versa. Outside of Europe, the US and China, Canada is the largest market for indigenous exporters - with more than 400 Enterprise Ireland clients employing over 6,000 people doing business in the Canadian market.

1.2 Provisional Application

CETA has provisionally applied across the EU since the 21st of September 2017. Provisional application is a standard mechanism provided for in the EU's Free Trade Agreements. This means that those areas where the EU has full competence may be applied immediately once the Agreement has been voted for by Council and the European Parliament. It is an important mechanism that allows companies and consumers to benefit from a trade agreement at an early stage, as the completion of national ratification procedures across all 27 Member States can take a number of years. There are approximately 42 Member State national and regional parliaments with democratic control over the ratification of Agreements such as CETA which contain provisions beyond trade as defined by the EU Treaties.

1.3 Ratification Process

A Free Trade Agreement relating solely to goods and services falls under the exclusive competence of the Commission with ratification by the Member States in Council under QMV and by the European Parliament only. On the other hand, a "mixed" Agreement, such as CETA, contains aspects where competence is "shared" with the Member States (i.e. Investment Protection – EU Investment Court System). For a "mixed" Agreement, ratification is also required at EU Member State level. In Ireland's case, ratification requires the approval of Dáil Éireann owing to the possibility of a charge arising to the Exchequer as outlined below.

While there are no costs directly arising from the implementation of CETA, in a case where it is determined that there has been a material breach of an obligation under Chapter Eight of the Agreement (an investor has been treated in a discriminatory manner), the Investment Court System may require a Member State to pay compensation equivalent to the economic harm the investor is proven to have suffered.

It is on this basis that the Government is seeking to ratify CETA in line with Article 29.5.2 of the Constitution which states:

"The State shall not be bound by any international agreement involving a charge upon public funds unless the terms of the agreement shall have been approved by Dáil Éireann".

1.4 Objectives of the Proposal

The core objective of the ratification of CETA is to promote economic growth in Ireland through an increase in trade and investment between the EU and Canada.

Given our historic ties with Canada, Ireland's enterprises are particularly well placed to benefit from CETA. Indeed, as CETA has provisionally applied since 21st September 2017, we have already seen many of its benefits take effect resulting in increased exports of Irish goods and services, in support of quality, well-paid, jobs.

2. Identification of Options

Option A: Ratify CETA guaranteeing the continuation of tariff-free trade between Ireland and Canada while also providing investment protection for both Irish and Canadian investors.

Option B: Decide against ratifying CETA while seeking the continued provisional application of CETA.

Option C: Reject CETA.

3. Evaluation of options

3.1 Option A – Ratification - Benefits

Option A: There are strong grounds to ratify the Agreement as it introduces permanent regulatory certainty, and guarantees market access and tariff-free trade between Canada and the EU. Ratification also provides additional protections for investors and a redress mechanism should they encounter discriminatory or unfair treatment.

The main benefits for Ireland in this Agreement include:

1. the opening up of public procurement markets in the Canadian provinces giving Irish firms increased access to Canadian public sector purchasing;
2. unlimited tariff free-access for most of our important food exports;
3. the recognition of product standards and certification, saving on ‘double testing’ on both sides of the Atlantic – a particular benefit for SMEs;
4. trade facilitation provisions that reduce processing times at the border;
5. significant opportunities in the services sector;
6. a framework for the EU and Canada to recognise each other's qualifications in regulated professions;
7. agreement that products are only able to be imported to, and sold in the EU, if they fully respect EU regulations;
8. consumers potentially enjoying lower prices and a wider choice of products and services once the Canadian import satisfies all EU product rules including social and environmental standards, as well as people's health and safety and consumer rights and
9. high level of protections for Irish investors seeking to invest in Canada and a mechanism to vindicate their rights (ICS).

The benefits of CETA have started to be realised under the provisional application of the Agreement with Irish exports to Canada increasing for both goods and services when compared to 2016, the last year prior to the provisional application of the Agreement:

Goods Exports

2016	2020	% Growth
€953m	€1.7b	78%

Services Exports

2016	2019 ¹	% Growth
€1.6b	€2.3b	44%

Looking further back, Canada has consistently been a growth market for Ireland, with goods exports increasing by €1.1bn (253%) and services increasing by €1.7bn (285%) since 2009. On average, since CETA's provisional application in 2017, goods exports have grown by 18% annually and services exports by 15% annually during 2017-2019.

In terms of companies and jobs, there are 600 Irish companies currently exporting to Canada while 25,000 jobs in Ireland are supported by EU exports to Canada.

The Department of Enterprise, Trade and Employment commissioned Copenhagen Economics, one of the leading economics research firms in Europe, to undertake an independent analysis of economic opportunities and impacts for Ireland of a selection of FTAs that are either in force or recently agreed with Canada, Japan, Korea and Mexico. The report, published on 28 April 2021, estimates that a fully implemented CETA will result in the following benefits for Ireland:

- Ireland's GDP will be 0.2% higher.
- Ireland's total global exports will be 0.7% higher and total global imports 0.7% higher.
- Real wages are forecast to increase by 0.3% for high skilled workers and 0.5% for low skilled workers.
- The cost of non-tariff barriers to trade (e.g. customs procedures, standards, conformity assessment) will be reduced by 27% for agri-food, 8% for manufactured goods and 10% for services.

3.2 Cost implications of Option A - Ratification

There are no costs directly arising from CETA. The full coming into force of the Agreement once ratified across all Member States, will see the implementation of the Investment Chapter of the Agreement including the resolution of disputes between investors and states through a mechanism known as the Investment Court System (ICS). The day-to-day administrative cost of the ICS tribunal including the retainer fees of the fifteen members will place no charge on the Exchequer and will be covered by the budgets of the EU Commission and Canada.

In a case where it is determined that there has been a material breach of an obligation under Chapter Eight of the Agreement (an investor has been treated in a discriminatory manner), the ICS may require a Member State to pay monetary damages. The amount of damages must not exceed the losses suffered by the claimant as a result of the breach. The Tribunal cannot impose punitive damages. Furthermore, an investor cannot be given compensation just because they have lost profits or suffered economic loss or incurred costs.

¹ Last available year

It would be an entirely hypothetical exercise to try to estimate what, if any, costs could arise for the Exchequer on foot of any judgement from the ICS or to say what type of discrimination would be substantiated against the State. It is also not possible to anticipate the sector of the economy or the size of the company which may pursue such a claim. The Irish State has a strong reputation for rule of law, and no record of treating inward investors unfairly, inequitably or in a discriminatory manner. Hence, the State's exposure to economic loss cannot be regarded as materially impacted arising from the introduction of the ICS mechanism provided for within CETA, and especially given the already existing recourse inward investors from any jurisdiction have to the domestic courts. Furthermore, it must be noted that CETA preserves the right of each EU Member State to regulate in public interest.

In conclusion, when considering the potential cost to the State of pursuing Option A, the precise monetary value is not technically quantifiable though, in light of the experience and track-record of the Irish Government in supporting foreign investment in Ireland heretofore, the risk and/or likelihood of an award being made against the State is negligible. On that basis, the protections offered by CETA to Irish investors in Canada would far outweigh any potential exposure to the State under the Agreement.

3.3 Option B – Seeking continued provisional application - Benefits

With regard to **Option B**, while the benefits accrued to date in terms of trade in goods and services would continue (as set out under Option A above) in the medium term, seeking to allow provisional application to continue on an indefinite basis would bring substantial legal uncertainty for businesses around tariffs, market access, customs and conformity requirements. Indefinite provisional application is unprecedented and would be open to legal challenge. In addition, EU and Canadian investors would be unable to benefit from the protections afforded by the implementation of the Investment Chapter of CETA. However, this would also mean that the EU, its Member States and Canada would not be exposed to any potential awards made by against them under the auspices of the Investment Court System in CETA although this risk has been assessed as negligible under Option A.

3.4 Option B – Seeking continued provisional application - Costs

No immediate costs arise for the Exchequer from this option – however significant legal doubt remains over the feasibility of indefinite provisional application, putting at risk the benefits identified under Option A. Failure to ratify this Agreement in its entirety would raise questions about Ireland's status as a supporter of open, rules-based trade and investment and also damage any ongoing trade and/or investment negotiations by the EU with third-party countries. The economic benefits of CETA to the Irish economy highlighted by the Department of Enterprise, Trade and Employment through the aforementioned Copenhagen Economics study would also be at risk given that such benefits have been calculated based upon a fully applied Agreement.

3.5 Option C – Rejection of the Agreement - Benefits

There is no quantifiable benefit arising from Option C the selection of which would see Irish businesses lose the high level of access to the Canadian market that they currently enjoy on a provisional basis.

3.6 Option C- Rejection of the Agreement - Costs

Option C has the potential to cause the collapse of the Agreement in its entirety. If Ireland, or any EU Member State did not ratify CETA, this would be a first for an EU trade agreement. Given that such a step would be

unprecedented, it is not clear what would follow in terms of the level of legal and reputational cost for Ireland and the EU though it is likely to be significant. It is also not possible to anticipate Canada's willingness to renegotiate only particular elements of such a comprehensive agreement. While the loss to the Irish economy could be somewhat quantified by the projections from the Copenhagen Economics study (see p.6) it must also be borne in mind that a complete rejection of the Agreement not only denies its benefits to Ireland but also all other EU Member States and Canada.

4. Impact Analysis

This section examines the expected impact of the proposed legislation.

Whether the Proposals Involve a Significant Policy Change in an Economic Market, Including the Impacts on Consumers and Competition

Free Trade Agreements have been found to drive competition, provide greater consumer choice, open markets and foster innovation to the benefit of the wider economy. There is also a high correlation between an increase in inward investment and a corresponding growth in the overall level of trade between the parties involved.

The Rights of Citizens

Under the Agreement, Irish Citizens (and firms) seeking to invest in Canada will gain a stated set of protections and a redress mechanism. Furthermore, CETA provides legal certainty for trained workers, who temporarily enter the EU or Canada to do business and for a framework for the mutual recognition of professional qualifications between EU and Canada.

Compliance Burdens, including Administrative Burdens

The Agreement provides for a number of trade-facilitating measures and reduced customs obligations. One such measure Irish firms will be able to benefit from will be the recognition of product standards and certification, thus saving on 'double testing' on both sides of the Atlantic. Measures such as these will lighten the administrative burden both for Irish businesses exporting and/or importing to/from Canada.

National Competitiveness, Socially Excluded or Vulnerable Groups, The Environment, North-South and East-West Relations

As one of the first "new generation" EU Free Trade Agreements, CETA contains a dedicated chapter on Trade and Sustainable Development. This chapter recognises both Parties' commitment to co-operate on trade-related environmental issues of common interest including trade related aspects of domestic climate-change policies and programmes. More specifically, CETA includes commitments on the sustainable management of forests, fisheries and aquaculture. It also reinforces the Parties' commitments to multilateral environmental and labour agreements including the Paris Agreement, which is an important shared responsibility for the European Union, its Member States and Canada, and the fundamental International Labour Organisation (ILO) conventions. Importantly, in CETA both sides also agree that more trade and investment should not be at the expense of environmental protection and labour rights.

In addition, real wages in Ireland are forecast to increase by 0.3% for high skilled workers and 0.5% for low skilled workers comparative to the baseline scenario without CETA.

4.1 Impact on Small and Medium Enterprise

The benefits and opportunities to business in the agreement will be especially valuable for SMEs, given that trade barriers tend to disproportionately burden smaller firms, which have fewer resources to overcome them than larger firms. To this end, CETA contains an entire chapter exclusively dedicated to SMEs aimed at addressing those specific constraints that might otherwise limit SMEs taking full advantage of the improved EU-Canada market access. A top priority for each Party was to develop a CETA SME website. Both Canada and the EU launched their respective websites in April 2019, which contain information regarding CETA that each Party considers as useful for SMEs of both Parties. The websites include information such as a user-friendly summary of the CETA text for SMEs; links to the equivalent website of the other Party, websites of its government authorities/entities that provide useful information to SMEs and information on access to its market, import requirements and other information the Parties intended to assist SMEs of the other Party.

Furthermore, the provisions in the chapter on investment make it less costly for SMEs to engage in investment dispute resolution than what is currently the case under investment dispute settlement mechanisms of other trade agreements. CETA includes:

- Specific provisions on mediation - which do not exist outside EU Agreements - are of particular relevance to SMEs as mediation represents a low-cost option compared to full litigation. CETA encourages parties to a dispute to solve the issue amicably within 60 days rather than go through litigation. The possibility to have mediation is available at any time of the proceedings.
- Provisions allowing parties to hold consultation via videoconference which is an easy and low-cost option of particular relevance for SMEs.
- Procedural deadlines make proceedings faster and reduce the costs for SMEs of the litigation.
- Possibility on request of an SME to submit claims to a single judge (neither from the EU or Canada) will make the proceedings faster and cheaper (instead of 3 judges).

It is also worth noting that SME issues can be raised in the various Committees responsible for the implementation of the Agreement.

4.2 Specific impact of the ratification of the Agreement

The elements of CETA that are provisionally in force since 21st September 2017 include:

- the elimination of tariffs on almost all key exports,
- access to the Canadian procurement market,
- the easing of regulatory barriers, and
- more transparent rules for market access.

The full coming into force of the Agreement would see these measures introduced on a permanent basis, providing legal certainty for Irish businesses seeking to increase their level of trade with Canada

The key provisions that will be applied following ratification of the Agreement relate to **investment protection and investment dispute settlement**.

All international trade agreements have dispute resolution arrangements. Where such agreements cover not only (i) trade in both goods and services but also (ii) investment rules and protections, then there must be a

dispute resolution mechanism that covers investments. The EU's new approach to investment protection is the Investment Court System (ICS) which is contained in CETA and replaces the old ISDS mechanism which has been found to be outdated in recent years. As outlined in the assessment of sections A and B, the likelihood of a case being taken against Ireland is negligible.

Investors may utilise either national courts or the ICS, but cannot "forum-shop" – they cannot use both. Equally, it is important to remember that a Canadian firm can seek to sue the government for alleged unfair treatment or discrimination in Irish courts whether CETA exists or not. CETA simply provides an arbitration alternative. However, that alternative, unlike a challenge in the courts, cannot find any act by Government to *be ultra vires* or unconstitutional - it is only concerned with redress for proven harm. As the ICS Tribunal cannot interpret national law or seek to overturn same there is no question of it overriding national courts or legislatures.

Separately, a core element of Ireland's economic policy is supporting the internationalisation of Irish firms and securing new markets for Irish business. New and emerging markets in Asia would be seen as having the most potential for growth for Irish businesses. It is in this light that the full ratification of CETA can be seen as setting an important precedent in securing investment protections and dispute resolution for Irish businesses. Canada has a common-law system and is a likeminded Country with which Ireland has deep cultural and historical ties. Therefore, in many ways, an inability to secure investment protections with Canada would damage Ireland and the EU's capacity to secure an appropriate level of Investment protection with countries and regions that are not as likeminded as Canada in economic, political and legal terms.

5. Review

The Government has identified as its preferred option, Option A - Ratification, on foot of the foregoing considerations. As a small, open economy, Ireland has benefitted immensely from our export orientated enterprises trading across the globe and, therefore, we fully support balanced international trade and the suite of EU Free Trade Agreements that seek to underpin this. Successive Governments have argued that the EU's suite of FTAs coupled with programmes of Minister-led trade missions and bilateral visits overseas have provided key foundations for our strong economic and trading links to global export markets.

Ireland has also been a beneficiary of significant levels of Foreign Direct Investment or FDI for many decades with an increasing number of Irish enterprises also making overseas investments in key markets in recent years.

In negotiating CETA, the intention of the EU was that it would set the benchmark for Free Trade Agreements that are progressive and of the highest standard in international terms. As such, Ireland's credibility in promoting open and fair global trade would be undermined if we are not in a position to ratify this Agreement. Additionally, there would be significant reputational damage for the EU as it would bring in to question its ability to conclude comprehensive free trade agreements and/or investment agreements in the future.

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