

## **The (December 2020 plan for a) Dáil vote on CETA is not about trade.**

[This was written in December 2020 when the government gave very short notice of a planned vote in the Dáil on CETA's ICS. The vote was postponed and subsequently the High Court ruled CETA's ICS to be unconstitutional. In the ruling, the court advised the government that an amendment to the Arbitration Act (2010) would allow the minister to sign Ireland up to investor-state dispute settlement (ISDS) mechanisms such as CETA's Investor Court System (ICS). The article is still relevant today (February 2026)

The Dáil vote is solely about whether to say Yes or No to the adoption of a parallel legal system empowering foreign companies to bypass the Irish and European courts so they can sue EU governments in private for the future 'unearned' profit which they must forgo in order to abide by new governmental laws and regulations which impinge on their profits.

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### **CETA's Canadian Beef Quota Destined for Ireland**

The department of the Minister for Enterprise, Trade & Employment states that in CETA, "Ireland has secured strong protections for our beef industry through restricted quotas for Canadian beef entering the EU". The majority of that Canadian beef quota was destined for export to the UK which is not a member of the EU anymore. Trade experts now claim that in order to maximise benefits from Canada's tax-free beef quota in CETA, that this beef will now be diverted to another English speaking EU country, namely Ireland.

### **Government's CETA Motion in Accordance with 'Charge on the State' Constitutional Law**

The department's communique on the forthcoming CETA vote states the CETA "Agreement in its entirety can only be concluded by the EU once all Member States have notified of the completion of their own constitutional and legal requirements, which may include the involvement of their respective national and/or regional parliaments." It is precisely because the ICS (ISDS) component of the CETA (the only part of the agreement which needs member state parliamentary approval in order to be ratified and come into law) will involve future financial charges on the state that the Tánaiste is forced to seek approval of CETA under a motion, "in accordance with Article 29.5.2 of the Constitution". When an international agreement can result in the state being charged or fined then prior to its adoption, the Constitution requires the Dáil to approve it under Article 29.5.2. This relates to the ICS (ISDS) of CETA.

### **Tánaiste makes inaccurate claims that "CETA guarantees that environmental standards" will be protected**

When the Tánaiste claims that CETA allows for the protection of, "wild flora and fauna and endangered species" and of, "the right of each Party to regulate" what he means is that we can regulate yes, but that financial compensation for all future 'unearned' profits 'lost' due to any new regulations can be claimed for under the parallel legal system of ICS (also known as ISDS) contained in the CETA. The rules of this Investor Court System (ICS) are contained in the investment protection chapters of the CETA and it's very clear in the text that 'arbitrators' adjudicating on claims are under no legal obligation to take Irish, EU or international law and regulations into account. Indeed, this is precisely why an 'investor' would wish to use the ICS mechanism to make a claim for financial compensation because it allows him to bypass the Irish and European courts, laws, regulation and legal precedents. Indeed, the German Association of Judges has claimed in its public opposition to the proposed new legal parallel system of CETA, the 'reformed' Investor Court System (ICS) that it, "sees neither a legal basis nor a need for such a court [i.e. the ICS]" (Mark, 2016).

### **The Environment and Labour chapters of CETA are aspirational and are not legally enforceable**

While echoing civil society's concerns that CETA contains no legal provisions to enforce workers' rights and environmental protection, Bartels tells us that, "The crucial point, however, concerns the consequences of a finding of a violation [at the ICS]. This, following recent EU treaty practice, is decidedly weak. ... In other words, there is no real enforcement at all" (Bartels, 2017: 208).

### **What the Tánaiste means when he says CETA is a "new generation EU free trade agreement"**

The Tánaiste claims that CETA is a "new generation EU free trade agreement". What this means is that:

(a) CETA has a 'stop and ratchet clause' (where it becomes illegal in international law to renationalise an industry even if there is a democratic mandate to do so (Sinclair, et. al, 2016)).

(b) CETA has the 'negative lists' approach which means that unlike previous trade deals where one had to explicitly list which areas of the economy were subject to the rigours of the terms of a deal, in these 'new generation' deals, all aspects of life are subject to the rules of the agreement unless a government specifically details those that are not (Nichols, 2016).

(c) CETA establishes a permanent regulatory co-operation council which was described by the head of the European consumer affairs association as the, "surreal institutionalisation of lobbying" (Goyens, 2015; CEO, 2016).

(d) CETA has an Investor-State Dispute Settlement (ISDS) which empowers foreign companies to sue governments for compensation for all future unearned profit, in private, before part-time, for-profit arbitrators when court rulings, laws or regulations impinge on profit (Van Harten, 2016, & 2017).

### **Background notes**

If the private parallel legal system of ISDS ( - which would allow non-EU companies to sue EU governments for all future unearned profit if and when our laws and regulations interfere with their profit - ) was removed from CETA, then there would be no legal requirement under EU or member state law for any EU member state government to vote on CETA in their national parliaments.

We here in Ireland unfortunately need to remember that when the Irish government joined fellow member states in 2009 to give the European Commission unanimous approval to initiate and conclude the EU-Canada free trade and investment protection agreement known as CETA, that that Irish government approval had to be signed off by cabinet, a cabinet which included Irish Green Party government ministers.

That 2009 mandate which gave the EU Commission the green light to initiate and finalise the CETA also contained the provision to allow them to establish a 'regulatory co-operation council'. Now that council is up and running and is gnawing away at EU climate, health and safety regulations without the need to have changes approved by the European Parliament.

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