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Canada EU Trade Agreement CETA: For Corporations or Citizens. Higher Education as a Universal Space for Critical Discussion and Debate

Introduction

The term 'Trade War' has re-entered the lexicon of international and global geopolitics in recent times. International trade has a significant bearing not just on the economic life of countries but on their citizens, their societies and cultures too. Trade impacts on citizens, not just corporations. It is therefore not simply the preserve of economists and the business community, it is the business of political representatives, sociologists, environmentalists (increasingly) and educators also.

The Comprehensive Economic Trade Agreement (CETA) between Canada and the European Union (European Commission, 2016; Government of Canada, 2016) is one of a new generation of international trade agreements. CETA was agreed and signed in 2016 and came into provisional force on 21st September 2017. Once it is ratified by each of the 28 EU member states¹ in their respective parliaments it will enter into force fully. Yet there is limited public awareness or debate in both Canada and Europe about CETA other than public communications through citizen groups, NGOs, interest groups and sections of the mainstream media. This is where educational institutions can make a useful contribution and it might be argued, they have a duty to do so.

Higher Education in Transformation (UDHEIT, 2018) is a unique collaboration between a number of Higher Education Institutions in Canada and Ireland which host educational conferences on a biannual basis in Ireland and Canada respectively. The Centre for Higher Education Research Policy and Practice (CHERPP, 2018) is a research collaboration between these same institutions in Ireland and Canada². Whilst there is no formal link between the CETA structures and processes on the one hand and HEIT/CHERPP on the other, HEIT is well placed to provide an intellectual space to facilitate informed discussion, awareness raising and debate about CETA in particular in the context of global trade and its impact on citizens, their livelihoods, society and economy.

This paper provides a starting point for creating this intellectual space for informed analysis and debate about CETA across our academic communities in Ireland and Canada. Firstly, the key components of the Comprehensive Economic and Trade Agreement between Canada and the EU will be outlined. Secondly, CETA will be viewed in the context of the history of international global trade agreements since 1947 when the Bretton Woods institutions were established to bring about global rules which would harmonise and protect the global economy in the post-war era. Thirdly, the opportunities and problems that have been identified with free trade as opposed to fair trade will be examined with reference to examples impacting on citizens, particularly in countries of the global south³. Fourthly, the most contentious aspects of CETA will be outlined, in particular concerns regarding the Investor Court System as a trade dispute resolution mechanism, harmonisation of EU and Canadian standards for goods (for example food) and services, labour laws, key sectors such as farming as well as public services including education. The paper will conclude with a proposed role for how our Higher Education Institutions in Canada and Ireland (EU) could contribute to raising awareness and informing the public about CETA and its implications for citizens in our two countries.

¹ 27 member states when Britain leaves the EU in March 2019.

² On the Canadian side the institutions are University of Ontario Institute of Technology and Durham College. On the Irish side the institutions are the Dublin Technological University Alliance which involves three HEIs in the Dublin region, Dublin Institute of Technology, Institute of Technology Tallaght and Institute of Technology Blanchardstown.

³ The global south refers to countries traditionally defined as developing countries or third world countries, former colonies along with emerging economies such as India and Brazil.

CETA Explained

The Comprehensive Economic Trade Agreement (CETA) between Canada and the European Union (European Commission, 2016; Government of Canada, 2016) was agreed and signed in October 2016. It came into provisional force on 21st September 2017. This trade agreement will lower or eliminate customs barriers and other barriers to trade between the EU and Canada (European Commission, 2016). Before CETA 'only 25 percent of EU tariff lines on Canadian goods were duty-free. With CETA, 98 percent of EU tariff lines are now duty-free for Canadian goods' (Government of Canada, 2016).

Both the Government of Canada and the European Commission websites provide comprehensive summary and detail on the trade deal (Government of Canada, 2016; European Commission, 2016). CETA contains thirty chapters on a range of trade matters including; market access for goods, technical barriers to trade, customs arrangements, subsidies, investment (including the controversial provision for an Investor Court System (ICS) to rule on complaints), trade in services, entry and stay of persons, recognition of professional qualifications, financial services, telecommunications and e-commerce, competition policy, government procurement, intellectual property, regulatory (standards) co-operation. CETA also includes chapters on trade and sustainable development, trade and labour and trade and the environment. The three latter have been heralded as progressive and whilst these are welcome, there is a degree of sugar-coating at work here, to mask the devilish detail in other parts of CETA for example, concerns regarding standards in food (genetically modified organisms) and the concern expressed by citizens, public representatives and businesses at the plans for an Investor Court System (ICS) contained in chapter eight on investments. The ICS is perceived to be weighted in favour of corporations over governments and is therefore viewed as anti-democratic.

Despite having been negotiated since 2009 (in secret), CETA only gained public attention in October 2016 when the Wallonia parliament in Belgium raised concerns at EU level which halted the treaty signing summit for several days between Canada and the EU. To enter into force CETA requires the ratification of all 28 member states of the European Union along with 10 regional parliaments. The bill to ratify CETA in Canada was given royal assent in May 2017. The Wallonia parliament in Belgium were concerned that CETA 'gives too much power' to multinational corporations (Rankin, 2016). The Walloon parliament were vilified for being anti-trade and for holding the EU hostage (McArdle, 2016), however, they did raise legitimate concerns for farmers in Wallonia. The EU Commission conceded to the Walloon parliament that Belgium could bring the contentious Investor Court System (ICS) contained in CETA to the European Court of Justice to assess its compatibility with EU laws. The Irish parliament will debate CETA once the ECJ gives its ruling. The specific concerns highlighted by farmers, producers, environmental groups and civil society groups are consolidated in a comprehensive paper produced by Comhlamh an Irish global development NGO (Comhlamh, 2017). These will be discussed further in the section dealing with CETA concerns. First, it is worth placing CETA in the global context of international trade agreements from historic and contemporary perspectives.

Global Trade Context

In 1947 the leading politicians and government officials from the allied states which were victorious in the second world war (Britain, France, Canada, US, USSR, Australia and New Zealand) established three institutions to stabilize the post-war global economic order. These were known as the Bretton Woods institutions, named after the village in New Hampshire, in the US where the UN hosted this International Monetary and Financial Conference. 44 nations were represented. The three institutions which were established were the International Monetary Fund (IMF), the World Bank

and the General Agreement on Tariffs and Trade (GATT). GATT would later become the World Trade Organisation (WTO). There were a number of rounds of trade talks held which agreed reductions in trade tariffs. By 1984 when the WTO was formed, 123 countries had signed up to its global trade rules affecting 'hundreds of billions of dollars in trade' (p. 208).

However, there has been growing opposition by poor countries to the unfair trade rules. These countries have clubbed together as the G33 or G48 to counter the power of the G8. India is one of the strongest countries in this block. Successive rounds of trade talks including the last round in Bali (2014) have been inconclusive (p. 213). The break-up of global consensus has been due in part to the growing strength of former poorer countries, the so-called BRIC economies of Brazil, Russia, India and China. Riots at the WTO's Seattle round illustrated the anger felt by civil society groups and governments of the global south at how the world trade rules were unfairly rigged in favour of the developed rich countries (Daly, Regan and Regan, 2016, p. 208).

In the twenty first century, the World Trade Organisation seems to have less global legitimacy. The emergence of regional trade agreements is a phenomenon of this century with significant discussion about agreements such as NAFTA (North Atlantic Free Trade Agreement), TTIP (Trans Atlantic Trade and Investment Partnership) and TPP (Trans Pacific Partnership) as regional rather than global trade agreements. CETA is one such regional trade agreement. That said, WTO rules are often referred to in the context of Britain's exit from the European Union. Once Britain leaves the EU, unless there is a trade agreement with the EU, the WTO rules are likely to apply to trade with Britain.

The US administration is now following a protectionist approach to global trade in the interests of its America First policy. It is a cause of some alarm among activists who support fair trade policies in favour of the small producers in the global south and north, who oppose unfettered trade, that they are conveniently dismissed and aligned alongside protectionist and isolationist camps (such as the current US administration) in international trade discourse. Whilst TPP was opposed by Trump as well as grassroots activists, it was also opposed by Sanders. It is disingenuous to conflate these divergent political and ideological perspectives into the same camp (McArdle, 2017, p. 6).

What the recent spat of trade wars between the US and EU on the one hand and the US and Canada on the other, points to is the deep misunderstanding that exists regarding the principles and objectives of trade vis a vis the respective parties affected by trade arrangements. Historic unfair trade arrangements, (most toxic of all being the slave trade) , must not be forgotten in modern day international trade negotiations. This crisis may present an opportunity for the UN to reconstitute global consensus around a reformed WTO.

Trade and the Global South

Development scholars have been severely critical of the performance of these institutions when it comes to the development of countries in the traditional third world or global south. Drawing on compelling evidence, Daly Regan and Regan (2016) point out that Asia, Africa and Latin America had three-quarters of the world population and two-thirds of world income in 1700, but by 1820 Asia's economic decline had started and 'its share of world gross domestic product dropped from 36% in 1870 to 15% in 1950. Not surprisingly, this period coincided with colonisation of Africa by European powers and in this same period Europe and America gained global dominance in international trade (Daly, Regan and Regan, 2016, p. 208).

Whilst the authors concede that the reduction in international trade tariffs has opened up trade and enabled 'improved living standards in many countries across the globe' (p. 208), since 1990 there have been noticeable flaws. Farmers from the global south argued that they could not compete on a

level playing field with farmers in developed countries who were subsidised by their governments (e.g. the EU's Common Agricultural Policy) and therefore were able to undercut the prices of produce of southern farmers. Similarly, the rules of trade appeared to benefit the corporations located in rich countries. For example pharmaceutical companies patented anti retroviral drugs to treat AIDS under global trade rules. These patents artificially kept the price of these drugs high and very expensive for African governments who were not allowed to replace these drugs with cheaper generic copies of the same drugs. This was finally resolved but involved complex processes.

There have been similar problems with the WTO's Trade Related Intellectual Property Rights (TRIPs). Under WTO rules, pharmaceutical corporations and agrifood giants have effectively undertaken 'acts of bio-piracy' by permitting them to patent genetic materials, traditional cures, and seed varieties in the developing world, thus claiming intellectual property rights or ownership over these indigenous resources. Indigenous farmers in the third world who have been saving, selling and exchanging the seeds for generations have found themselves in breach of TRIP (Watkins and Fowler, 2001, p. 17).

However, the most stark example of how the global free trade rules are rigged in favour of rich countries (e.g. EU and America) is the pricing and tariffs attached to raw materials. The value of raw materials such as coffee beans, produced in the global south can be sourced at relatively low prices. Oversupply can maintain commodities at lower prices. However, the value is added by the coffee corporations higher up the production chain. The jar of coffee is sold at a much higher price than the raw material and the bulk of the profit goes to the corporation not the growers. This is true of other commodities such as cotton, fruits etc. (Watkins and Fowler, 2001, pp. 13-14).

Given the focus of this paper is on a trade deal between two trading blocks in the rich global north, the question arises how CETA may impact on the global south. Perhaps this is a chapter which is missing from CETA. CETA does need to be proofed as to its global impact, in particular its impact on the developing countries of the global south. Rich countries have traditionally given aid to poor countries. Development experts argue that unfair trade wipes out the benefits derived from aid and that it is fair trade as much as aid which will lift the global south out of poverty. Growing poverty in the global south and inequality in the share of global trade is a concern for the entire global community. It should be a concern for the negotiators of CETA as well.

CETA Concerns

The specific concerns regarding the Comprehensive Economic and Trade Agreement between Canada and the EU have been encapsulated by the Trade Justice Group of Comhlamh, an Irish development NGO who have produced *CETA: The Implications for Ireland* (Comhlamh, 2017). This is a guide for citizens to engage their public representatives on the matter of CETA. At the outset, the group believe 'trade should be used as a tool for countries and people to develop and prosper' (p.1). Civil society groups, environmental groups and NGOs are not anti-trade, they are actually pro-trade, however, this trade should be based on principles which benefit the citizen, more than the shareholders and directors of transnational corporations.

Whilst the guide deals with implications of CETA for Ireland, these implications may also speak to other countries in the EU. The key issues of concern relate to workers rights, food, fisheries, environment and democracy (p. 2). The most controversial aspect of CETA is the proposed special court or Investor Court System⁴. The provision in chapter eight of CETA 'sets out measures to open

⁴ The text of CETA refers to Investment Court System rather than Investor Court System (European Commission, 2016, Chapter Eighth, Article 8, Section F, Articles 8.18 to 8.45).

up investment between the EU and Canada, and protect investors and ensure that governments treat them fairly' European Commission, 2016). Comhlahm Trade Justice Group argue that:

CETA gives corporations sweeping new rights to challenge our environmental, social and health regulations in special corporate courts. Once it comes into force, corporations can bypass domestic courts and sue governments for compensation under this Investor Court System (ICS) (Comhlahm, 2017, p. 3).

Comhlahm cite objections to the proposed court from reputable legal and judicial institutions including the European Association of Judges, the German Magistrates' Association and 101 professors of law from 24 countries and 122 legal scholars (p. 3). The clear concern here is that a new court will be established which will bypass the domestic courts of member states of the EU and indeed the European Court of Justice (Finnegan, 2016, p. 1). This would apply inter alia to domestic courts of Canada and the Supreme Court of Canada. Finnegan articulates the concern as follows 'increasingly, legal scholars and associations claim that ISDS (Investor State Dispute Settlement arbitration mechanism) and the threat of it has a chilling effect on potential legislation, overturns cherished principles of the independence of the judiciary, equality before the law, and the democratic state's right to regulate public policy (University of Kent, 2014)' (Finnegan, 2016, p. 1). As referred to earlier, the Belgian regional parliament of Wallonia have won a concession that the European Court of Justice rule on whether the investor-state tribunals described in CETA are compatible with EU law (Rankin, 2016).

The second area of concern relates to regulation and standards in the two territories. Chapter twenty one of CETA deals with 'regulatory cooperation' and chapter twelve deals with 'domestic regulation'. The aim of these chapters is to 'encourage regulators to exchange experiences and information, and identify areas where they could cooperate' and 'ensures that all regulations which the EU and Canada issue are publicly available, easily understandable, and reasonable...to ensure that domestic regulations in the other territory don't act as an unfair barrier to trade for EU or Canadian businesses' (European Commission, 2016). It is claimed by Comhlahm's Trade Justice Group that CETA 'requires countries to explicitly list which of their regulations and rules they want excluded from the deal' (Comhlahm, 2017, p. 3). For example Ireland has not excluded public services such as healthcare and education in their negative list, meaning these could potentially be considered subject to CETA provisions. Trade is increasingly relating to services as well as goods and CETA has a chapter dealing with services (chapter 9). The concern with co-operation on regulations also refers to the divergent principles governing regulation in Canada and the EU respectively. The Trade Justice Group point out that whilst Canada determines regulation using the 'science-based approval process' (Comhlahm, 2017, p. 4), the EU develops regulation using the 'precautionary principle'. In the EU the onus is on industry to prove their products are safe before sale, in Canada, the government must prove the product is unsafe before it is banned from sale (Comhlahm, 2017, p. 4). However, the latter point is deeply contested by Canadian regulators who argue that they do not have a presumption of safety nor that the onus is on government to prove that a product is unsafe.

The third area of concern relates to farming and fishing. CETA could open the way for much larger agri-food corporations to sell their produce in the EU thus undermining the market for smaller farm producers in Ireland to compete in the market. For example, Canadian high value beef producers will be allowed to compete in a limited EU market upon which Ireland is dependent. In the global context there are serious concerns for climate change if we continue to consume the quantities of meat (beef) derived from the bovine herd (and consequent increases in levels of methane component of greenhouse gases). Comhlahm site similar concerns regarding fishing communities dependent on lobster and scallop fishing in Ireland and the EU. The current tariff on Canadian fishing

operations of 8% will reduce to 0% under CETA and this will lower prices for everyone, thus threatening livelihoods in fishing in Europe.

There are a number of related concerns regarding the environment in the CETA deal. Whilst Ireland has banned onshore fracking (not offshore) as well as legislation going through parliament on banning fossil fuel exploration, extraction and divestment (Oireachtas, 2017, 2016), there is concern that international energy corporations will be able to use the CETA Investor State Dispute Settlement mechanism to take the state to court for loss of investment (Comhlamh, 2017, p. 11). Currently, there is a proposal to build a liquified natural gas (LNG) terminal in the port of Cork, where LNG from fracked gas sourced in Texas from a US company Next Decade would be supplied to Ireland. It is hypocritical for the state to ban fracking onshore in Ireland whilst proposing to import fracked gas into Ireland which destroys local communities elsewhere in this case the Texas Mexico border area (Rybiki, 2018, p. 2).

These are the key concerns which merit examination, enquiry and above all debate at the level of citizen groups. Creating public spaces where informed discussion and debate can be pursued on these important issues is one of the public functions fulfilled by our academic institutions. It is to the creating of such a space for public debate on CETA that this paper now turns.

Creating Public Academic Space for CETA Debate

As a unique international education partnership between Canada and Ireland HEIT is well placed to provide an intellectual space to facilitate informed discussion, awareness raising and debate about the Comprehensive Economic and Trade Agreement (CETA) between Canada and the EU. As public institutions, HEIs provide an intellectual space to serve the public and citizenry in our respective countries to inform and educate the public about the context of CETA and the role of CETA in social and economic development. One area that will be of mutual interest to academics from both sides is the area of academic credentials. Education could be classed as a marketable commodity subject to international trade rules such as CETA. Therefore academic credential recognition and exchange are likely to fall under the remit of services within the terms of 'goods and services' referred to in traditional trade agreements. It is in the interests of academics to critically analyse how our labour and activity is to be treated within international trade agreements such as CETA, whether it is a product or a service, and how academics feel about the commodification of teaching and learning, academic research, and academic credentials.

The forthcoming conference in Dublin (30th October – 2nd November 2018) (UDHEIT, 2018) will provide an opportunity to initiate this intellectual space. In true co-operative fashion, this remains a proposal until agreement is reached on the purpose and process for creating and managing this space between our respective institutions in Ireland and Canada.

This paper provides a starting point for the discussion. This paper has provided a brief overview of CETA pointing to relevant official sources in the European Commission and the Government of Canada. The paper has placed CETA in the context of historic and contemporary developments in global trade. The paper has focused in particular on the impact of international global trade rules on countries of the global south, who have drawn attention to the unfair nature of global trading arrangements. This paper has outlined the main concerns regarding CETA and the potential impact on democracy, regulatory frameworks and standards, particular sectors of the economy and public services. Above all these concerns are raised in good faith to protect the rights of citizens, and affected parties in particular small farmers, fishing communities, workers and environmentalists.

There is no doubt that CETA contains positive intentions and elements. The promoters of this agreement owe it to their citizens to enable the maximum public debate and discussion, not least in our democratic institutions prior to the full implementation of the agreement.

The collaboration involving our higher education institutions in Ontario Canada and Ireland EU can support this effort by engaging with critical examination of CETA, informing and facilitating public intellectual debate and raising awareness among our communities of citizens.

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