CHAMBERS IRELAND

IN BUSINESS FOR BUSINESS

The Transatlantic Trade and Investment Partnership

Pillar Three- Trade Rules

Submission to Joint Oireachtas Committee on Jobs Enterprise and Innovation

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Introduction

Chambers Ireland is the largest business network in the State. With members in every geographic region and economic sector in Ireland, we are well positioned to understand the concerns of businesses from all areas in the country and represent their views.

We welcome the opportunity to contribute to the work of the Committee on Jobs, Innovation and Enterprise and look forward to further engagement with the Committee as the TTIP negotiations continue.

The Transatlantic Trade and Investment Partnership is a free-trade agreement currently being negotiated between the EU and US. The agreement has three main strands; improved market access; improved regulatory coherence; and improved co-operation when it comes to setting international standards. The trade deals aims to increase integration between the US and the EU, two economies that together account for over 50% of global GDP. In addition, it is hoped that TTIP will be the gold standard for any future international trade deals and will cement both our economies' role in setting and raising international standards in areas such as consumer safeguards, environmental protection and employee welfare.

With the current impasse of the World Trade Organisation (WTO) Doha negotiations for a Trade Facilitation Agreement, Chambers Ireland believes that it is important that the European Commission seeks alternative ways to improve market access for European firms, as well as working for a constant improvement of trade rules. Therefore without losing sight of, nor withdrawing support for the initiatives pursued by the WTO, seeking to improve our relationship with the EU's biggest trading partner - the United States – is a logical and sensible step towards strengthening the transatlantic economic relationship. The European Commission reports that over the next ten to fifteen years, 90% of world demand will be generated outside Europe. It is essential for future trade that Ireland remains in the heart of Europe and the global economy.

Background- The Projected Impact for Ireland

In March 2015, at the request of the Department for Jobs, Enterprise and Innovation, consultants Copenhagen Economics published a report on the economic benefit of TTIP for Ireland. Given the strong existing relationship between the Irish and US markets, it is predicted that TTIP will benefit Ireland more than double the European average.

As of 2013, Ireland exported €18 billion worth of goods to the US, equivalent to 21% of total Irish exports of goods, making the US the single largest market for Irish exports of goods.

The Copenhagen Economic report predicts that if TTIP were introduced today, it would increase Ireland's GDP by 1.1%. Using 2013 GDP of €175 billion as the base, this would mean an increase of €2 billion. The report claims that this would add between 5,000 and 10,000 jobs in export industries.

The main sectors predicted to benefit from a trade agreement include pharmaceuticals and chemicals, manufacturing industries, agri-food (notably dairy and processed food) and insurance industries.

Pillar Three- Trade Rules

The objective of *Pillar Three- Trade Rules* in the proposed Transatlantic Trade and Investment Partnership is to put in place new rules to help all EU and US firms trade and invest more easily. This section of the agreement is particularly focused on assisting SMEs get the full benefit of TTIP, helping companies to invest with confidence and enabling businesses to save time and money on paperwork at customs. This Pillar also prioritises putting sustainable development principles at the heart of the EU-US trade deal

It is the view of Chambers Ireland that there needs to be a deep and fully comprehensive trade agreement with the United States that strengthens multi-lateral trade rules and enables SMEs to trade internationally. In Ireland, SMEs make up about 99% of business operating here. Although small firms face the same trade barriers as larger companies, they have less staff and resources to deal with them. SMEs are negatively impacted by trade barriers more than large companies because they have to spread fixed costs like regulatory compliance, product testing and approval over smaller sales. Therefore, removing customs duties, simplifying procedures and reducing the cost of diverging standards will help benefit SMEs in very significant ways.

We believe that the TTIP should set a new global standard as an SME-friendly trade agreement and that the focus should be on streamlining and reducing the administrative burdens associated with customs procedures; offering tailored support for exporting SME's; and providing cost effective access to investment protection for companies of all sizes.

Customs and Trade Facilitation

One objective of TTIP is to make it easier for companies trading goods between the EU and the United States to get their goods through Customs. In order to boost trade between the EU and the US, the negotiating parties have agreed that reforming the rules on customs and trade facilitation will be very important.

Some of the reforms suggested by the European Commission include agreeing simple effective rules that are easy to understand and to follow, ensuring that customs procedures are more transparent and agreeing to ensure that the EU and the US work more closely together in the future.

Trade facilitation and reducing red tape in relation to custom procedures will have a significant benefit for SMEs. Due to their size, SME's have to invest more resources in complying with Customs requirements and usually do not have an export unit or even an expert specialised in customs policy and procedures. As the information and administration requirements costs that are necessary in order to enjoy the preferential tariffs are very high, it very often occurs that SMEs would opt not to export under Free Trade Agreements. Therefore streamlining and reducing the administrative burdens associated with customs procedures, harmonizing standards and arranging mutual recognition of certification would go a long way to helping SMEs to internationalise.

Chambers Ireland recommends that the TTIP agreement should include the following so that customs and trade facilitation procedures are truly SME friendly:

- Raise de minimis levels for the threshold under which goods do not have to pass US custom controls.
- Focus on eliminating unnecessary custom controls: ,i.e. have controls at place of origin, but not again upon arrival
- Ensure transparency and predictability when it comes to trade regulations and procedures. For our businesses and particularly SME's, having clear and understandable procedures, as well as a maximum degree of transparency is vital.
- Ensure the electronic submission of customs declarations,
- Establish a single window for custom procedures
- Ensure a consistent application of the harmonised system code (customs tariff code). The first six figures of the HS-Code used for the export procedures should be accepted for import procedures. Thus if the exporting or the importing company has received a binding tariff information/ruling from the competent customs authority of a country this ruling should be accepted by other involved customs authorities in other countries
- Strengthen the EU-US Mutual Recognition Agreement for trusted traders in terms of benefits for participating companies. The administrative burdens should also be reduced, by applying for instance a single online application and validation process.
- Rules of origin that are truly SME friendly; simple to use, easily understandable, containing low thresholds for sourcing from third parties and coherent with existing RoO's in other EU FTA's.

The SME Chapter

SMEs represent 99%[1] of all American and European businesses, amounting to more than 20 million companies in the EU alone. Driving economic growth, innovation and employment, EU SMEs employed 88.8 million people in 2013 (and created 85% of all new European jobs between 2002 and 2010) and provided two out of three private sector jobs[2] , contributing €3,666 trillion to the economy[3]

However, one aspect that is lacking is the internationalisation of SMEs. A study by the European Commission found that only 13% of EU SMEs export to countries outside the EU[4]. The SMEs that do export internationally create more jobs (6% more than SMEs that do not engage in international

[1] Office of the United States Trade Representative, "TTIP: The Opportunities for Small and Medium-Sized Enterprises," March 2014.
[2] European Commission, DG Growth Figures: http://ec.europa.eu/growth/smes/index_en.htm
[3] European Commission, "Annual Report on European SMEs 2013/2014", July 2014.
[4] "EU Trade Policy and SMEs" March 2011, available at http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc_147637.pdf

activities) and are more innovative (26% of international SMEs created products that were new for their sector, compared with 8% that were not international).[5]

The proposed SME Chapter is one of significant interest to the Irish Chamber Network. The purpose of the SME Chapter is to ensure that small businesses across the EU can easily sell to or import from the US and subsequently take advantage of the TTIP agreement, once in effect, to help grow their businesses.

As part of the proposal to include an SME Chapter, the European Commission has committed to setting up a free online helpdesk that will give access to information about transatlantic trade issues (tariffs, customs, non-tariff barriers, market) for SMEs. This would also include a resource commitment for both sides, to develop and maintain such a source of information. Lack of information has been repeatedly identified as one of the major obstacles to SMEs internationalising. This Portal, if properly resourced, should make it easier for small businesses to export to and invest in the US market. We would also suggest that the "Portal" be initially tested through pilot programmes to ensure that it can deliver in the interests of SMEs.

The EU has also committed to creating an institutional mechanism called the "SME Committee" to monitor how benefits from TTIP actually accrue to SMEs on both sides of the Atlantic.[6] The EU proposal commits to ensuring that all areas of the agreement will be monitored so as to ensure they are SME friendly. The SME Committee would also have responsibility to communicate all areas of the agreement to SMEs in a user-friendly way and will also develop close working relations with SME stakeholders.

We particularly welcome the suggestion within the initial proposal from the EU that the "SME Committee" would be empowered to review all aspects of the trade agreement. This would significantly help regulators identify areas where there could be regulatory co-operation and this would subsequently benefit small business who often bear a disproportionate burden when it comes to regulatory costs and administrative red tape.

Intellectual Property Rights

The proposed Chapter on Intellectual Property Rights is being designed to help bring innovative products and services to EU and US consumers more quickly. At the heart of this Chapter is an acknowledgement by both negotiating parties that innovation and creativity drives economic growth on both sides of the Atlantic.

One aspect of the negotiations that Chambers Ireland welcomes is the suggestion that a dedicated section for SMEs in the Intellectual Property Chapter would be created. This would be a very welcome step towards more suitably tailoring the intellectual property rights system to the needs of SMEs and small innovators. SMEs, because of their small size, their business model, difficulty in

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[5] European Commission, "Survey on Internationalisation of European SMEs", 2010 available at http://europa.eu/rapid/press-release_IP-10-895_en.htm

[6] Textual Proposal for an SME Committee in the SME Chapter available at http://trade.ec.europa.eu/doclib/docs/2015/november/tradoc_153934.pdf

accessing finance, often need tailored policies to ensure that with their limited capacity they can benefit to the maximum from general rules.

As previously highlighted, lack of information is one of the main hurdles SMEs face when going international and this also applies to the protection of their Intellectual Property Rights. The dedicated SME Chapter commits to creating a one-stop shop information portal. Therefore, we recommend that expanding and integrating the proposed Transatlantic IPR Portal into the SME Portal would highly benefit small companies by ensuring consistency in the sources of information and creating an actual one-stop shop portal for all information related to transatlantic trade in an interactive and user-friendly manner.

In addition we would recommend that as the negotiations continue that both sides reflect on how we can reduce costs involved in filing an application for IP protection, particularly in the patent area, as well as enabling and strengthening fast-track filing systems for SMEs.

Investment Protection and Dispute Settlement

Investment protection and consequently effective Investor State Dispute Settlement (ISDS) mechanisms are a necessity for any comprehensive agreement to be successful. A company investing in a foreign country is not only taking a commercial risk, but it is also running the risk of losing its investment through discriminatory or arbitrary treatment by a foreign government, including the possibility of having its assets seized.

A free trade agreement without ISDS but with investors referred to state courts would, for example, mean that:

- the investor would always act away from home; it has to adapt to language and procedure, which the state does not;
- the investor must trust the national court to be completely independent and have enough integrity to be able to decide against its own government;
- the dispute will likely last longer than would be the case in an ISDS procedure;

These factors would mean that the balance of power would be weighted in favour of the State. It also means that dispute resolution would likely be more costly and inefficient than arbitration, potentially costing both the company and the taxpayer more.

Additionally, should an SME be faced with an investment dispute under a Free Trade Agreement, it may not only threaten the investment, but also the company's very survival, and the jobs of its employees. SMEs are much more sensitive to legal uncertainty. Therefore, it is crucial that SMEs have guarantees that should they invest abroad and suffer discriminatory treatment, they have access to a cost-effective dispute settlement mechanism.

The Transatlantic Trade and Investment Partnership needs to embody "Think Small First" Principle and incorporate mechanisms throughout the trade deal that encourage and enable SMEs to export and invest. TTIP should not only be about attracting investment but also about encouraging our own home-grown industries to expand their operations internationally. SMEs will need to know that if and when they do invest internationally, they are protected from discriminatory treatment and have access to a dispute settlement mechanism. Therefore, it is important that both negotiating teams design mechanisms for investment protection and dispute settlement that are cost effective and accessible to SMEs.

For example, the recent EU-Canada trade deal (The Comprehensive Economic and Trade Agreement or CETA) has proposed a mechanism to make ISDS more accessible for SMEs.[7] CETA contains specific provisions on mediation as a way of encouraging amicable resolution to disputes. It also introduces the possibility of a sole arbitrator (as opposed to three) on the agreement of both parties and proposals to place limits on the fees paid to arbitrators.[8] We would recommend that a similar approach is taken as part of the TTIP trade deal.

We also suggest that encouraging the use of Alternative Dispute Resolution mechanisms like mediation and incorporating dispute resolution mechanisms at national level would help SMEs avail of investment protection and investment dispute mechanisms at a much lower cost.

Conclusion

Increased cohesion and co-operation between the two largest markets in the world is an enormous economic opportunity for Ireland, with benefits for the consumers and businesses alike. With 12th round of trade negotiations due to take place in Brussels this February, we would urge Irish public representatives to support making continued progress in negotiating what will be the largest trade deal in history.

We would also urge public representatives to continue to press for an agreement that ensures that interests and needs of SMEs are at the heart of the proposed trade deal so that they will be able to reap the benefits, which will consequently benefit the Irish economy.

[7] http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151918.pdf

[8] Relevant CETA provisions: Article X.19 Mediation; Article X.22.5 Submission of a Claim to Arbitration, Article X.38 Fees and Expenses of the Arbitrators