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British Foreign Investment Policy Post-Brexit: Treaty Obligations vs. Bottom-Up Reforms

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Executive Summary

Although the competence to negotiate investment protection treaties was partially delegated to the EU with the Lisbon Treaty, Brexit is likely to put the competence back in the hands of Whitehall. This raises two questions. First, what should the British government do with its existing stock of bilateral investment treaties (BITs)? And second, how should the UK approach negotiation of new investment treaties? Answers to both questions require the government to carefully assess whether investment treaties provide considerable net benefits compared with other foreign investment policies. This is particularly important given the scarce bureaucratic resources and political capital available to pursue international economic policies post-Brexit.

To help with this assessment, the government should consider undertaking two preliminary analyses before deciding on the course ahead:

I. A comparison of the protections offered under international investment law with those offered in UK law; and

II. A comprehensive and carefully construed survey of British foreign investors regarding the role of investment treaties for their operations pre- and post-establishment.

The latter task is particularly important in order to understand whether, and to what extent, investment treaties do in fact provide tangible benefits to a broad section of British outward investors compared with other initiatives to assist with the promotion and protection of foreign investment.

Political and Administrative Constraints

Negotiating and ratifying investment treaties has become increasingly complicated. Few paid much attention to the agreements during the 1990s - when the bulk of UK BITs were signed – but recent controversies associated with investment treaty arbitration have made it more difficult to conclude such agreements, at least in their traditional form. Examples of when investment protection rules complicated negotiations are provided by the Transatlantic Trade and Investment Partnership (TTIP) and the Comprehensive Economic and Trade Agreement (CETA) with Canada. Equally, there has been considerable political controversy in Britain over the impact of decisions of the Court of Justice of the European Union and European Court of Human Rights. It is not inconceivable that similar, or greater, controversy could erupt should three party-appointed arbitrators be given similar powers over the British government in an international claim brought by a foreign investor. And, while British investment treaty policy was traditionally a non-partisan issue, the Labour Party manifesto now explicitly opposes the investment treaty regime.[1]

In addition to the spending of political capital, there are administrative costs associated with negotiating, ratifying, and administering investment treaty obligations. While BIT negotiations used to be a relatively low-key task that could be delegated to generalist civil servants, this is no longer the case. The increased level of public scrutiny and controversy is one reason, but the task has also been rendered considerably more complex by the growing jurisprudence in investment treaty arbitration. No analyses exist on the bureaucratic resources required for an active investment treaty program, and the costs are bound to vary depending on the other party and the nature of the agreements. Yet, an active program requires setting aside highly specialised civil servants to:

- obtain input from business, labor, civil society groups, and other non-governmental stakeholders;

[1] At least one Conservative MP has also expressed opposition to allowing foreign firms to bypass British courts; independent.co.uk/news/uk/politics/british-sovereignty-at-risk-from-eu-us-trade-deal-uk-in-danger-of-surrendering-judicial-independence-9057318.html.

- obtain input from and coordinate with relevant government stakeholders;
- study arbitral decisions;
- participate in international meetings where investment treaty issues are discussed at UNCTAD, OECD, UNCITRAL, ICSID, and ICC;
- inform relevant government stakeholders of their investment treaty obligations when engaging with foreign investors;
- provide evidence to parliament and cabinet about the effect of planned investment treaties;
- manage the existing stock of UK investment treaties, potentially through renegotiations or 'interpretative statements';
- engage in negotiations – often abroad.

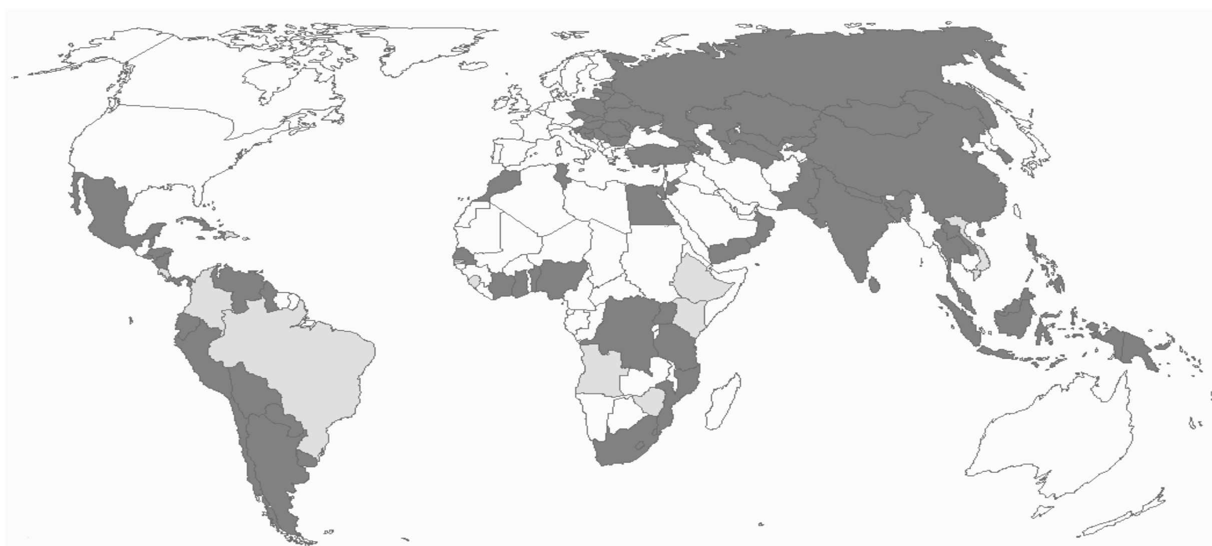
Some of these tasks would have to be undertaken even if the UK were to decide not to pursue an active investment treaty program post-Brexit. This includes managing the existing stock of investment treaties already in force, which by now are widely regarded as outdated compared to modern day investment treaty practise. The bureaucratic costs would be significantly higher should the UK wish to proceed with an active investment treaty program as it would require specialised officials to divert time and resources from other foreign investment policies. After outlining the policy options for existing and future British investment treaties, the conclusion of this brief will sketch what such an alternative foreign investment policy agenda might look like.

Existing and Future British Investment Treaties: Policy Options

Existing Treaties

The United Kingdom has signed 110 BITs to date. The majority are in force and all are with developing and transition economics (Figure 1). The treaties are highly similar in their substantive and procedural provisions. They follow the typical 'OECD-template' that focuses exclusively on investment protection. Investor and investment coverage is extremely wide-

ranging and the core protection provisions are broad and vaguely drafted. Almost all treaties include a broad and binding consent to investor-state arbitration, but no UK BIT includes legally binding obligations on market access or investor obligations. Similar protections are enshrined in the Energy Charter Treaty (ECT) to which the UK is a party.



Notes: Signed (light grey), in force (dark grey). Not visible on map: Antigua & Barbuda, Bahrain, Barbados, Dominica, Grenada, Hong Kong SAR, Mauritius, Singapore, St Lucia, Tonga, Trinidad & Tobago, UAE, and Vanuatu. Treaties have been terminated with South Africa, Sierra Leone, and Romania.

FIGURE 1. BILATERAL INVESTMENT TREATIES ENTERED INTO BY THE UK, 2017

Almost all British BITs have initial treaty terms of 10 years after which they remain in force until one year after a party has given written notice of termination. Only very few have specific treaty modalities for amendment or renegotiation. There are exceptions to this pattern, but the relevant point is that since all but three BITs came into force before 2007 and almost all allow unilateral termination at any time after the initial duration of 10 years, practically all UK BITs can now be unilaterally terminated at any time.

This is important given on-going developments in the investment treaty regime. Unilateral termination of investment treaties has begun to spread among developing countries such as South Africa (including the UK BIT), Ecuador (including the UK BIT), Bolivia, Venezuela, and Indonesia. Some intra-EU BITs have also been terminated (including the UK-Romania BIT) and Italy has left the ECT. Other countries, such as India, have threatened termination

unless their treaty partners engage in renegotiations on the basis of updated treaty models. Should more countries begin to terminate their investment treaties this would gradually erode the British investment treaty network. The UK has five potential responses to such a scenario, which are not necessarily mutually exclusive:

I. The UK can offer a partner country something in return for keeping the treaty in place.

II. The UK can agree to *mutual termination.* If there are no on-going investor claims being pursued under the treaty and both parties agree to preclude the application of the survival clause, then all past, present, and future investor rights under the treaty would then be terminated immediately.

III. If the UK does nothing and the partner proceeds with *unilateral termination*, the survival clause will apply for covered investors having made their investments before the termination of the treaty. Most UK BITs have survival clauses for a period of 20 years, although a significant number have shorter periods (e.g. 15 years in the BIT with Ecuador and 10 years in the BIT with Egypt).

IV. The UK can agree to *renegotiate* the treaty, which would typically involve clarifying and restricting the scope of protections afforded to foreign investors compared to the very brief and broadly drafted UK investment treaties. As mentioned below, more significant renegotiations could also involve more comprehensive changes in the substantive and procedural obligations. In some cases, it may be more cost-effective to renegotiate with multiple like-minded parties at once in order to replace previous BITs with a new plurilateral investment treaty.

V. The UK can agree to a set of *interpretative statements*. Particularly if done before investment treaty claims are brought under the treaty, tribunals must take such statements into account when considering the scope of the treaty provisions. Apart

from joint interpretations with treaty partners – as pursued by the NAFTA parties for instance – the UK can also engage in unilateral statements, which can have legal effects as well. Discussions are underway within the OECD how to facilitate more interpretative statements as a low-cost and non-contentious way to manage existing stocks of treaties.

The choice will ultimately depend on the perceived costs and benefits of the existing stock of treaties, something I will return to below after briefly considering the broad policy options for *future* British investment treaties.

New Treaties

As noted above, the spatial coverage of UK's investment treaty network is very comprehensive. A few important treaties have significant limitations in their arbitration provisions (Russia and China), or have never come into force (Brazil). Yet, the vast majority of risky jurisdictions with commercial relevance have already signed and ratified comprehensive BITs with the UK. With the number of relevant partners largely saturated, this inherently limits the scale of any future British investment treaty program. Moreover, even when there is no UK BIT, British investors may be able to obtain treaty protections through third-country jurisdictions.

That said; the UK government might wish to negotiate new treaties nevertheless, for instance by revising its policy of only signing treaties with developing and transition economies. If so, the magnitude of the costs and benefits of future agreements will depend on the content, form, and choice of partner countries.

Content: Whereas almost all BITs to date have been based on the same decade-old template, the fast-moving policy developments in the investment treaty regime mean the UK is bound to face a much broader range of design choices going forward. India, for instance, is pursuing treaties with requirements for the use of local remedies for up to five years. The EU and Canada have begun discussions about the feasibility of a global

investment court. Brazil is pursuing investment treaties focused on investment facilitation, and the referral of disputes to local prevention and mediation or, alternatively, inter-state dispute settlement. Other design choices have also been discussed, including investment treaties based solely on non-discrimination provisions rather than setting separate ('non-contingent') standards for foreign investors, a renewed emphasis on investment liberalisation, small claims mechanisms, and more comprehensive investor obligations. Suffice it to say, different drafting choices with respect to the scope of coverage, substantive protections, and procedural rights will not just affect the consistency across the UK's investment treaty network – something that is bound to become ever more difficult – but also whether existing or future treaties will provide net benefits or costs. In addition, design choices impact the extent to which the treaties correspond with investment promotion and protection activities pursued by other parts of the British government, such as DFID.

Form: Enshrining investment protections into broader trade agreements allows for a give-and-take across different parts of the agreements, unlike stand-alone investment treaties. Yet, recent experiences with CETA and TTIP also highlight how investment protection provisions can risk losing support for trade agreements as a whole.

Partner countries: The existing level of political risk in the host state (and, in case of liberalization provisions, market access) will determine the extent to which the treaties provide potential value-add for British investors. Equally, the stock of investment in the UK controlled by investors from the partner country will co-determine the exposure to investment treaty claims. For instance, consenting to investment treaty arbitration with the EU could potentially offer benefits to UK investors in some Eastern and Southern EU member states, but would simultaneously increase the risk of claims from the thousands of EU investors with assets in the UK.

Assessing Costs and Benefits

To assess the proper role of investment treaties in the future British foreign investment policy, the government needs information about two critical questions, which to date have remained almost entirely unassessed:

I. What are the expected costs of investment treaties for the UK?

II. What are the expected benefits of investment treaties for the UK?

Informal cost-benefit analysis is not the only analytical tool the UK government can make use of when considering its future investment treaty policy. Normative considerations about legitimacy can become relevant as well; for instance, if the principles behind investment treaty arbitration align, or conflict, with the underlying policy agendas. But assumptions about costs and benefits will remain central, and the government would be well-advised to base its future approach on a clear, reasoned, and empirically grounded understanding of the net costs and benefits of the treaties for the UK economy.

Costs

Whereas the UK is host to significant investment from investment treaty partners (such as Singapore, or energy investments from ECT partners) only two investment treaty claims have been brought against the UK to date, both of which were unsuccessful. This is because foreign investors rarely have sufficient reason to bring investment treaty claims against the UK. Investment treaty arbitration is costly and time-consuming, the jurisprudence is occasionally uncertain, and bringing a claim risks damaging the future relationship with the host state. Investors therefore rarely pursue claims unless there has been a very significant deterioration in their relationship with the government. Moreover, most successful investment treaty claims have concerned government behaviour that would anyway have been inconsistent with UK law. And although concerns have been raised about the possibility of Brexit itself resulting in investment treaty claims against the UK - for instance with the argument that the drastic change in the regulatory environment is a breach of

investors' legitimate expectations - there are strong reasons to expect that even such claims are unlikely to be successful.

That said; it may be overly optimistic to expect that BITs will not "pose any additional financial burden on the United Kingdom".[2] OECD states have been subject to a significant, and growing, number of investment treaty claims in recent years. With rising stocks of foreign capital controlled by emerging market investors, many BITs have become bilateral not just in principle but also in fact. Moreover, the few North-North investment treaties in existence have resulted in numerous claims. For instance, in a shareholder claim pursued under the ECT, a British investor – Eiser Infrastructure – recently won 128 million Euro plus interest for measures taken by the Spanish government that had been deemed legal by the Spanish Supreme Court and the Spanish Constitutional Court. Investment treaty arbitration served the British investor well in that case, but there is no inherent reason why the British government could not end up on the receiving end of similar claims. If Spain, Canada, the United States, and Germany can be subject to significant investment treaty claims – and lose some of them - it is difficult to see why the UK government should be insulated from this development.

As already mentioned, the risks of investment treaty arbitration vary depending on the existing and future stock of investment from the partner country into the UK. This is important when considering the potential costs of existing and future investment treaties. Yet a cross-cutting issue is whether, and to what extent, existing and future treaty provisions offer greater substantive investment protections for foreign investors than under British law and/or provide different remedies. This is a critical question for British investment treaty policy that has yet to be assessed in any detail.

One can think of a number of instances where there may be positive discrimination in favour of foreign investors, in which case the government could be exposed to investment

[2] See e.g. FCO, Explanatory Memorandum on the UK-Colombia BIT; gov.uk/government/uploads/system/uploads/attachment_data/file/317691/No._10_Cm_8887_Colombia_IPPA.pdf.

treaty claims even when complying with its own laws. For instance, judicial review of government conduct does not usually result in damages to a successful claimant under English law, whereas this would be the case in investment treaty arbitration. Second, whereas shareholders have made successful use of British and other investment treaties to recover damages for reflective loss, this is not allowed under British law (due to reasons relating to consistency, predictability, judicial economy, and the risk of double recovery). Third, if the British government were to terminate a contract with an investor that had breached the contract, English contract law would not require the government to consider whether terminating the contract would be considered a 'proportionate' response. That is not necessarily the case in investment treaty arbitration, and this has had a determining impact on at least one major investment treaty claim.

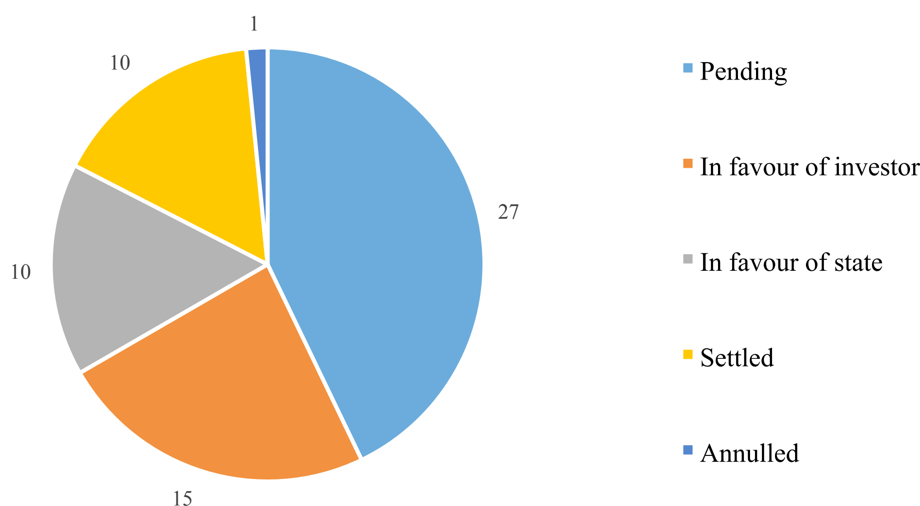
Finally, and importantly, even in cases where damages would be recoverable under English law, the quantum of damages may differ significantly from those recoverable under investment treaty arbitration. Lost profits, for instance, are not recoverable under English administrative law, unlike in investment treaty arbitration. To give two concrete examples: In 2014, the High Court required the government to pay compensation to a group of solar investors for unlawful revisions of investment incentive schemes, but the liability would likely have been much greater had similar claims gone to investment treaty arbitration. Equally, the compensation paid in the context of the 2008 nationalization of Northern Rock and Bradford & Bingley arguably fell short of what would have been required had the shareholders been able to bring the dispute to investment treaty arbitration.

All in all, the expected economic costs of investment treaty arbitration have been manageable for the British government and are likely to remain that way. Yet, experiences from countries like Canada and Spain indicate that some claims are bound to be brought against the UK and some may even be lost. This is particularly the case in circumstances where the treaties provide greater substantive investor protections than British law and it would therefore be helpful if the government were to assess the similarity between UK domestic and international investor obligations.

Benefits

The primary benefit of investment treaties to the UK would be if British firms benefit from the treaties and part of those benefits results in economic gains for British nationals and/or the British government (through taxation).[3] It is critical that the extent of these potential benefits for British investors are evaluated rather than assumed.

One crude indicator comes from looking at the use of existing British investment treaties. Whereas the UK has been spared from significant investment treaty claims to date, British investors have fared relatively well in claims against foreign governments (Figure 2). More than 2.5 billion USD have been awarded in compensation in claims by British investors brought under UK investment treaties, although the bulk was the 1.8 billion Yukos award which has since been set aside by a Dutch court (in turn raising uncertainty about pending recognition and enforcement proceedings).



Source: UNCTAD. See also appendix.

FIGURE 2. CLAIMS MADE BY UK INVESTORS ON THE BASIS OF UK INVESTMENT TREATIES AGAINST PARTNER COUNTRIES, AS OF JUNE 2017

[3] Other hypothetical benefits are non-economic: the potential to de-politicize investment disputes and promote ‘good governance’ in host states. There is hardly any empirical evidence on any of these questions. For a discussion; see Bonnitcha, Poulsen, and Waibel (2017), ch. 6-7, 9 listed under ‘Sources’ below.

Providing compensation to 15 British investors is not unimportant, of course, and more British investors are likely to have successfully used the treaties in informal negotiations with host states without filing actual arbitration claims. Yet the number is still very limited. Compare it, for instance, with the South Korean Office of Foreign Investment Ombudsman, which handles between 300 and 500 investor complaints every year. Granted, these cases touch on a wider range of issues than can be adjudicated under investment treaties and they may have helped prevent some investment treaty claims (South Korea has thus far only been respondent in three claims). Yet, the hundreds of disputes brought each year imply that investment treaties may only assist with a very small share of investor-state disputes. Equally, the number of investment treaty claims pursued by UK investors pales in comparison to the thousands of British investors with assets abroad.

The distribution of claims is also noteworthy. Whereas more than half of the British outward FDI position is in services, very few service investors have made use of the treaties (see Annex). Just two British claims have been pursued in financial services to date, despite financial services making a very large proportion of outward FDI.[4] Instead, almost half of all claims have been in electricity/energy, oil & gas, or mining. The size of the claims is also relevant. Among the claims for which there is information the median claim is for 120 million USD and the average is almost half a billion USD (440 million). Although there are examples of small claims, investment treaty arbitration primarily serves as a mechanism for resolving large, or very large, claims.

Given the potential costs associated with an active investment treaty program – administrative or otherwise – British policy-makers would be well-served with a clear understanding of the size and composition of the corporate constituency that receives significant and tangible benefits from the British investment treaty program. If a substantial share of outward British investment depends on the treaties – as for instance with the many British financial institutions dependent on passporting rights – then this could provide an

[4] One reason for the underrepresentation of UK financial service providers could be that when they operate in developing countries with little to no domestic regulation of the industry (which includes many UK BIT partners) the firms are often governed in practise by UK financial services regulation. I am grateful to Ira Lakhman for pointing this out.

important commercial argument in favour of keeping in place existing – and pursuing new – investment treaties. By contrast, if only a small subset of British outward investors relies on the treaties in practise, this may make it difficult to justify spending considerable administrative resources and political capital pursuing investment treaty obligations.

In particular, policy-makers need to know how many British firms do in fact rely heavily on investment treaties when:

I. Considering where, and how much, to invest abroad; and
II. Running into disputes with host states.

The relative importance of investment treaties compared to alternative instruments to protect against political risk varies considerably with the sector, size, and destination of the investment. Since the patchy nature of foreign investment data constrains the relevance of statistical analyses, the best way for the government to obtain information about the relevance of the treaties for corporate decision-making is by asking British firms themselves. (Consultants at business groups are often relied upon in government-business consultations, but they may not be a good substitute if they have views that differ from those of actual investors.)

When conducting such a survey, it is worth recalling that outward investors have an inherent incentive in lobbying for investment treaties as the agreements provide them with a 'subsidy' without bearing any of the costs. For instance, a recent survey administered by Hogan Lovells found that many firms who said they would not invest in a particular jurisdiction without a BIT had actually done so in practise. Accordingly, it is important to not just target the right decision-makers within firms, but also carefully phrase such a survey by forcing British firms to consider trade-offs: by spending bureaucratic capacity and political capital on investment treaty negotiations, the UK government will necessarily have to scale down other investment promotion and protection activities of interest to British foreign investors.

Equally, among the sub-set of British investors that receive significant benefits from investment treaties – which would typically only be those investing in particularly risky jurisdictions – it is worth querying the extent to which they can rely on self-funded alternatives. For instance, investors with significant sunk costs – such as in natural resources and infrastructure – are more likely to value the protections offered by investment treaties, since they are subject to greater political risks. Yet the same investors are also more likely to have negotiated investor-state contracts with their host states, which can provide similar protections as investment treaties. Equally, there is a large market for political risk insurance that protects foreign investors against some of the same risks as those covered in investment treaties. Such insurance can be expensive, but there may not always be a strong policy rationale for why this should be the concern of the British government. Investors also have a range of corporate risk mitigating strategies available to manage political risk, which can make international legal obligations less relevant in practise (e.g. operational hedging over time or multiple plants; joint venture/alliances with local companies, engagement with host government and communities, co-financing from donor agencies and international banks, etc.).

Finally, when it comes to options for dispute settlement mechanisms, the costs of investment treaty arbitration suggest that only relatively large investors can rely on this mechanism in practise (although this is partly offset by the availability of third-party financing). Equally, although investors can refer to the possibility of investor-state arbitration in informal negotiations with host states, such 'threats' may only be credible if they come from large investors. It is therefore important to receive input from small and medium sized investors as well. It is noteworthy, for instance, that the German Association of Small and Medium-Sized Firms – the largest business group in Germany – opposed investment treaty arbitration in TTIP and CETA as it was seen as biased in favour of major multinationals.

In short; Brexit offers an opportunity to take a step back and assess the future of UK investment treaty policy, both when it comes to choices about design and partners, but also

the basic role of investment treaties compared with other investment promotion and protection policies. One such alternative policy could be for the British government to take a greater role in shaping domestic reforms in host states.

Bottom-Up Reforms: An Alternative, or Complement, to Investment Treaties

Whereas obligations in investment treaties rarely 'trickle down' to domestic policy-makers until an actual dispute occurs, domestic investment reforms can more directly address the legislative, administrative, and judicial root-causes of insecure property rights. The British government is in a unique position to assist with, and shape, such reforms in partner countries. This work is already undertaken in a few projects sponsored by DFID – alongside World Bank and UNCTAD initiatives – but efforts remain focused on relatively few partner states (typically, the 27 priority DFID countries) and no program explicitly targets investment policy reforms.

A policy focusing on domestic reforms can emphasise both investment protection and promotion. Perhaps more promising, however, could be a renewed focus on investment *facilitation* – a critical issue almost entirely absent in the investment treaty regime. Whereas investment promotion focuses primarily on targeting certain types of inward foreign investment projects – e.g. through incentives or marketing efforts made by Investment Promotion Agencies – investment facilitation takes a whole-of-government approach and focuses on all investment, including domestic investment made by host state firms. The latter may occasionally help ensure greater levels of buy-in within host states compared to treaties that grant preferential rights to foreign investors.

A comprehensive foreign investment facilitation policy would be focused on factors such as:

- transparency in legal and administrative procedures;
- domestic registration and license/permit regimes;
- costs and efficiency of investment approvals;

- consistent application of investment regulations across government institutions;
- dispute prevention, e.g. through mediation or Ombudsman institutions;
- work permits for foreign senior staff and technicians;
- access to public utilities;
- promotion of investment linkages;
- inter-agency coordination and capacity building in executive and judicial institutions.

Supporting such reforms can provide long-term benefits for British (and domestic) business and they can be complemented by treaty instruments. There are informal talks within the WTO about the proposal of an investment facilitation agreement, for instance, and should the government decide to continue an active investment treaty program, there are also ways to complement such reforms within UK investment treaties. To date, British investment treaties have stayed almost entirely clear of investment facilitation. The fair and equitable treatment standard can become relevant for aspects of investment facilitation on occasion, such as transparency and predictability in government decision-making, and market access provisions could be relevant as well should the government wish to include them in investment treaties going forward. Yet, similar to almost all other investment treaties, UK practise has been to focus squarely on protection and on the resolution of disputes.

It does not have to be so. A few years back the Brazilian government came under pressure to re-initiate investment treaty negotiations. Based on discussions with business about the most binding constraints for Brazilian outward investors in practise, the government decided to draft a new type of investment treaty that prioritises investment facilitation. It is beyond this brief to consider the costs and benefits of this approach. But it serves to highlight that an active investment treaty policy does not have to follow past British investment treaty practise. There are alternative, and perhaps less contentious, design choices that can result in tangible benefits for large and small British investors, not least when pursued alongside complementary efforts that shape domestic investment reforms in partner states.

Conclusion

Whitehall is likely to regain the full power to negotiate investment treaties after Brexit. Yet, the controversy surrounding investment treaty arbitration has made it increasingly difficult to negotiate and ratify such treaties. Questions occasionally arise whether investment treaties are even worth the bureaucratic resources and political capital required. In order for the government to make an informed decision about the role of investment treaties within the broader UK investment protection policy, it should use Brexit as an opportunity to take a step back and undertake a government-led review of the costs and benefits of the treaties for the UK economy. This will also provide much-needed information about the appropriate design of past and, potential, future British investment treaties.

Sources

Several of the recommendations in this brief can also be found in three reports the author wrote for the Department of Business Innovation, and Skills (with Jonathan Bonnitcha and Jason Yackee):

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Appendix

No	Initiated	Investor	Respondent	Applicable investment treaty	Industry	Claimed (USD)	Outcome	Compensation (USD)
63	2016	Astro All Asia Networks	India	India-UK BIT	Telecommunications	NA	Pending	.
62	2016	Aharon Biram, Gilatz Spain, Redmill Holdings & Sun-Flower Olmeda	Spain	ECT	Renewable energy	NA	Pending	.
61	2016	Raymond Charles Eyre and Montrose Developments (Private)	Sri Lanka	Sri Lanka-UK BIT	NA	NA	Pending	.
60	2016	Glencore Finance (Bermuda)	Bolivia	Bolivia-UK BIT	Mining and manufacturing	NA	Pending	.
59	2016	Vedanta Resources plc	India	India-UK BIT	Oil and gas	3 bn	Pending	.
58	2015	Anglia Auto Accessories	Czech Rep.	Czech-UK BIT	Manufacturing	NA	Pending	.
57	2015	J.P. Busta and I.P. Busta	Czech Rep.	Czech-UK BIT	Manufacturing	NA	Pending	.
56	2015	Cairn Energy PLC	India	India-UK BIT	Oil and gas	1 bn	Pending	.
55	2015	Cortec Mining Kenya, Cortec (Pty) and Stirling Capital	Kenya	Kenya-UK BIT	Mining	2 bn	Pending	.
54	2015	Gabriel Resources and Gabriel Resources (Jersey)	Romania	Romania-UK BIT	Mining	NA	Pending	.
53	2015	Devincci Salah Hourani and Issam Salah Hourani	Kazakhstan	Kazakhstan-UK BIT	Pharmaceuticals	120 mio	Pending	.
52	2015	ICS Inspection and Control Services	Argentina	Argentina-UK BIT	Auditing services	NA	Pending	.
51	2015	JKX Oil & Gas plc, Poltava Gas B.V. and Poltava Petroleum Company	Ukraine	Ukraine-UK BIT; ECT	Oil and gas	270 mio	Pending	.
50	2015	Menzies Middle East & Africa S.A. and Aviation Handling Services Intl	Senegal	Senegal-UK BIT	Air transport	44.11 mio	In favour of state	None
49	2015	Paz Holdings	Bolivia	Bolivia-UK BIT	Electricity	19.51 mio	Settled	.
48	2014	A11Y	Czech Rep.	Czech-UK BIT	Retail trade	NA	Pending	.
47	2014	Anglia Auto Accessories, Ivan Peter Busta and Jan Peter Busta	Czech Rep.	Czech-UK BIT	Manufacturing	9.10 mio	Pending	.
46	2014	Anglo American PLC	Venezuela	Venezuela-UK BIT	Mining	600 mio	Pending	.
45	2014	InfraRed Environmental Infrastructure GP and others	Spain	ECT	Renewable energy	NA	Pending	.
44	2014	Krederi	Ukraine	Ukraine-UK BIT	Construction and real estate	120 mio	Pending	.
43	2014	WNC Factoring (WNC)	Czech Rep.	Czech-UK BIT	NA	90 mio	Pending	.

No	Initiated	Investor	Respondent	Applicable investment treaty	Industry	Claimed (USD)	Outcome	Compensation (USD)
42	2013	Eiser Infrastructure and Energía Solar Luxembourg S.à r.l.	Spain	ECT	Renewable energy	1.27 bn	In favour of investor	143 mio plus interest
41	2013	I.C.W. Europe Investments	Czech Rep.	Czech-UK BIT; ECT	Renewable energy	NA	Pending	.
40	2013	RREEF Infrastructure	Spain	ECT	Renewable energy	NA	Pending	.
39	2012	Accession Mezzanine Capital & Danubius Kereskedöház Vagyonkezelö	Hungary	Hungary-UK BIT	Radio broadcasting	NA	In favour of state	None
38	2012	Mr. Ali Allawi	Pakistan	Pakistan-UK BIT	Gas	573 mio	Pending	.
37	2012	Churchill Mining and Planet Mining Pty, formerly ARB/12/4	Indonesia	Indonesia-UK BIT	Mining	1.315 bn	Pending	.
36	2011	Garanti Koza LLP	Turkmenistan	Turkmenistan-UK BIT	Civil engineering	46.1 mio	In favour of investor	2.5 mio
35	2011	Indorama International Finance	Egypt	Egypt-UK BIT	Textiles	156 mio	Settled	54 mio
34	2011	Oxus Gold plc	Uzbekistan	Uzbekistan-UK BIT	Mining	1.25 bn	In favour of investor	10.3 mio
33	2011	Rafat Ali Rizvi	Indonesia	Indonesia-UK BIT	Financial services	75 mio	In favour of state	None
32	2011	Hortensia Margarita Shortt	Venezuela	Venezuela-UK BIT	Oil transport	NA	Settled	NA
31	2011	The PV Investors	Spain	ECT	Renewable energy	NA	Pending	.
30	2011	DP World Callao S.R.L., P&O Dover, and Peninsular & Oriental Steam Navigation Company	Peru	Peru-UK BIT	Civil engineering	200 mio	Pending	.
29	2010	British Caribbean Bank	Belize	Belize-UK BIT	Telecommunications	45.1 mio	In favour of investor	44.7 mio
28	2010	Dunkeld International Investment	Belize	Belize-UK BIT	Telecommunications	175 mio	Pending	.
27	2010	Guaracachi America and Rurelec PLC	Bolivia	Bolivia-UK BIT	Electricity	146.4 mio	In favour of investor	28.9 mio
26	2010	Standard Chartered Bank	Tanzania	Tanzania-UK BIT	Electricity	118.6 mio	In favour of state	None
25	2009	Dunkeld International Investment	Belize	Belize-UK BIT	Telecommunications	298.7 mio	Pending	.
24	2009	ICS Inspection and Control Services	Argentina	Argentina-UK BIT	Auditing services	25 mio	In favour of state	None
23	2008	Malicorp	Egypt	Egypt-UK BIT	Construction and transportation	NA	In favour of state	None
22	2007	AES Summit Generation and AES-Tisza Erömü Kft.	Hungary	ECT	Electricity	230 mio	In favour of state	None
21	2006	Oxus Gold	Kyrgyzstan	Kyrgyzstan-UK BIT	Mining	600 mio	Settled	NA
20	2006	Vestey Group	Venezuela	Venezuela-UK BIT	Agriculture	157.4 mio	In favour of investor	98.1 mio
19	2005	Biwater Gauff	Tanzania	Tanzania-UK BIT	Water and sewerage	20 mio	In favour of investor	None

No	Initiated	Investor	Respondent	Applicable investment treaty	Industry	Claimed (USD)	Outcome	Compensation (USD)
18	2005	EDF (Services)	Romania	Romania-UK BIT	Retail trade	132.5 mio	In favour of state	None
17	2005	Malaysian Historical Salvors, SDN, BHD	Malaysia	Malysia-UK BIT	Transportation and storage	3 mio	In favour of state, but annulled	None
16	2005	RosInvestCo UK	Russia	Russia-UK BIT	Oil and gas	232.7 mio	In favour of investor	3.5 mio
15	2005	Yukos Universal (Isle of Man)	Russia	ECT	Oil and gas	4.1 bn	In favour of investor	1.846 bn
14	2004	ANZEF	India	India-UK BIT	Electricity	42.8 mio	Settled	Non-pecuniary
13	2004	Standard Chartered Bank	India	India-UK BIT	Electricity	42.8 mio	Settled	Non-pecuniary
12	2003	AWG Group	Argentina	Argentina-UK BIT	Water and sewerage supply	34.1 mio	In favour of investor	21 mio
11	2003	BG Group Plc	Argentina	Argentina-UK BIT	Gas	238.1 mio	In favour of investor	185.2 mio
10	2003	Joy Mining Machinery	Egypt	Egypt-UK BIT	Mining	4.5 mio	In favour of state	None
9	2003	National Grid PLC	Argentina	Argentina-UK BIT	Electricity	59 mio	In favour of investor	54.5 mio
8	2003	Petrobart	Kyrgyzstan	ECT	Gas	4.1 mio	In favour of investor	1.1 mio
7	2002	JacobsGibb	Jordan	Jordan-UK BIT	Construction	NA	Settled	NA
6	2002	William Nagel	Czech Rep.	Czech-UK BIT	Telecommunications	NA	In favour of state	None
5	2001	AES Summit Generation	Hungary	Hungary-UK BIT; ECT	Electricity	NA	Settled	NA
4	2001	Booker plc	Guyana	Guyana-UK BIT	Agriculture	9.9 mio	Settled	NA
3	2000	UK Bank	Russia	Russia-UK BIT	Financial services	NA	Settled	NA
2	1998	Wena Hotels	Egypt	Egypt-UK BIT	Real estate	62.8 mio	In favour of investor	21 mio
1	1987	Asian Agricultural Products	Sri Lanka	Sri Lanka-UK BIT	Agriculture	8 mio	In favour of investor	0.46 mio

NOTE: Table does not include claims made by British investors on the basis of third country investment treaties.
SOURCE: UNCTAD

TABLE A1. CLAIMS ON THE BASIS OF UK INVESTMENT TREATIES AGAINST PARTNER COUNTRIES, AS OF JUNE 2017

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