Department for Business, Energy & Industrial Strategy

The Rt Hon Greg Hands MP
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Darren Jones MP
Chair, Business, Energy and Industrial Strategy Committee
House of Commons
London
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24 June 2022

Dear Darren,

I am writing to inform your Committee that members of the Energy Charter Treaty (ECT), including the UK, have today reached an Agreement in Principle to modernise the Treaty.

The Energy Charter Treaty (ECT) is a multilateral treaty signed in 1994 that promotes trade and investment in the energy sector, providing protection for energy investors through its investor-state dispute settlement (ISDS) mechanism. ECT members, including the UK, have been in negotiations for two years to modernise the Treaty in line with modern day international treaty practice and to reflect modern energy priorities. An extraordinary Energy Charter Conference is taking place today (24 June), where parties have reached the Agreement in Principle.

The ECT provides consistent legal protection for UK investors in the energy sector operating abroad, meaning UK companies investing in other ECT Member States have important legal guarantees for their operations. The modernised treaty includes investment provisions which are improved while ensuring the treaty's ongoing utility for UK investors. These provisions are of significant importance as they provide protection for UK investors from arbitrary or discriminatory treatment and provide recourse to Investor-State Dispute Settlement (ISDS) in the event of a breach of the treaty. The ECT's ISDS provisions are the most used of any treaty, and UK investors have brought 16 ISDS cases under it.[1]

The ECT plays an important role in protecting investments in clean energy given the substantial investment required to support the energy transition. The modernised Treaty will have a stronger climate focus to ensure alignment with the Paris Agreement, including clarifying that states can regulate for climate change mitigation and adaptation objectives. Green technologies such as carbon capture, utilisation and storage and low-carbon hydrogen production have been brought within the scope of the Treaty.

The modernised Treaty will include a flexible mechanism which allows ECT members to phase out investment protections for fossil fuels in their own territories, in line with their respective decarbonisation plans. The UK has chosen to utilise this flexible mechanism to phase out investment protection for fossil fuels in the UK. Accordingly:

- **New investments** in fossil fuel related activities in the energy sector would lose protection under the ECT immediately after the phase out provisions enter into force (August 2023).
- **Existing investments** in fossil fuel related activities in the energy sector would lose protection under the ECT ten years after entry into force of the modernised Treaty,

[1] Zero ISDS cases have been brought against the UK state under the ECT. UNCTAD Investment Policy Hub.

except for existing investments in **coal** which would lose protection under the Treaty from 1 October 2024.

- Electrical energy produced from abated gas with significantly reduced emissions would remain protected, as well as pipelines capable of transporting low-carbon gases.

This proposal is in line with the UK Net Zero Strategy and Energy Security Strategy: it promotes an accelerated energy transition and reduces the risk of challenge to UK climate policies without jeopardising critical investment in the North Sea. We are absolutely committed to supporting the UK's North Sea industry, underlined by the Government's recent Energy Security Strategy- committing to a new taskforce to support it and a new licensing round for new North Sea oil and gas projects. The UK has never faced a claim under the Energy Charter Treaty nor any successful Investor-State Dispute Settlement claims under any of the UK's 90 bilateral investment treaties. Investors in the UK and UK investors abroad will continue to benefit from applicable protections under these alternative treaties alongside the UK's legal system.

ECT parties will meet in November 2022 to sign the amended Energy Charter Treaty, which will enter into force after ratification procedures conclude.

The Government will also issue a Press Notice today.

Yours ever

THE RT HON GREG HANDS MP
Minister of State for Energy, Clean Growth and Climate Change