Department for International Trade

Department for Business, Energy & Industrial Strategy

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The Rt. Hon the Lord Goldsmith QC
Chair of the International Agreements Sub-Committee
House of Lords
London
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8 March 2021

Dear Peter,

Thank you to your Committee and officials for the document entitled '1st Report - Scrutiny of international agreements: Free Trade Agreement with Singapore, Trade Continuity Agreement with Canada and Association Agreement with Egypt'. I am writing to offer a response to points raised concerning the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Singapore (United Kingdom-Singapore agreement), and the United Kingdom of Great Britain and Northern Ireland and Canada (United Kingdom-Canada agreement).

Consultation

In your Report you urge HM Government to provide clear information as to whether any concerns on either agreement have been raised by the Devolved Administrations (DAs), the Crown Dependencies and Gibraltar, and, if so, how they have been addressed.

Throughout the course of the continuity programme, we have held a regular and detailed dialogue with Devolved Administrations, Crown Dependencies and Gibraltar. This has included regular Ministerial engagement, including through the Ministerial Forum for Trade and regular correspondence on specific agreements. DIT has also held regular official-level engagement, providing comprehensive updates on negotiations, advance sight of agreement text and support with legislative implementation.

Devolved Administrations, Crown Dependencies and Gibraltar have not routinely raised concerns with the trade continuity programme. It is important that any concerns which may be raised are handled in confidence and with discretion. DIT and the FCDO have worked with Parliamentary Committees recently to improve the quality and consistency of Explanatory Memoranda. However, we acknowledge the Report's request for more details on the specific nature of any concerns raised and will seek to further improve Explanatory Memoranda based on feedback.

Governance, amendments and dispute resolution

In the Report, the Committee argues that there is a lack of clarity when identifying whether an amendment should be subject to parliamentary scrutiny under CRaG. You urge HM Government to engage with the Committee to resolve this issue.

As we have said before, the amendment provisions in agreements generally determine process for scrutiny of amendments. Whether or not an amendment triggers CRaG, amendments will be published as they are made, and we look forward to working with Parliament on the appropriate level of scrutiny. The Government agrees that it is important to have a complete and up-to-date record of the treaties to which the United Kingdom is a party, and so the FCDO is working with departments to ensure that all amendments to treaties are published in the UK's Treaty Series, including those that are not subject to CRaG.

United Kingdom-Singapore Agreement

As the second-biggest deal the United Kingdom has signed in the Asia Pacific, the Singapore continuity agreement will provide a gateway to Asia for United Kingdom businesses, locking in the benefits of our existing trading relationship, worth £17.6 billion last year.

It is the latest step in the United Kingdom's trade strategy to create a network of trade agreements with dynamic economies far beyond Europe, making the United Kingdom a hub for services and digital trade. The United Kingdom is already one of the world's biggest exporters of digital services, with more than £200 billion worth of United Kingdom services delivered remotely in 2019.

We also intend to launch negotiations for a ground-breaking Digital Economy Agreement (DEA) with Singapore next year. This would be the first DEA Singapore has struck with a European country. This agreement would mean smoother exporting and importing for United Kingdom businesses, cutting red tape and setting global standards in key areas, such as cyber-security and emerging technology, enabling the United Kingdom to become a hub for digital trade with strong connections to Asia.

Digital trade with Singapore is now more important than ever, with 70% of United Kingdom services exports delivered remotely to Singapore last year, worth £3.2 billion. Singapore and the United Kingdom are both global leaders in the digital economy, and the new agreement will mobilise the benefits of digital trade for businesses and consumers in both countries.

Investment protections

In the Report you state that the Parliamentary Report notes that separate investment protection commitments between Singapore and the United Kingdom are continuing under an existing United Kingdom-Singapore Bilateral Investment Treaty. Nonetheless, the United Kingdom and Singapore have committed to updating the investment protection commitments.

As part of the negotiations to transition the EU-Singapore FTA, the United Kingdom and Singapore agreed to update investment protection commitments in the next few years.

The current bilateral investment treaty between the United Kingdom and Singapore was signed in 1975. In light of the investment relationship between the United Kingdom and

Singapore, it is in our interests to update the older provisions in line with recent developments in treaty practice.

The countries have agreed that this review will commence within two years of the United Kingdom-Singapore Free Trade Agreement coming into effect and will endeavour to conclude these negotiations within four years of it coming into effect.

The provisions and investment protections of the United Kingdom -Singapore BIT remain in force and are unaffected by the end of the Transition Period or by the United Kingdom - Singapore FTA.

Looking forward

In the Report you ask HM Government to keep you informed of any additional aims set out in the United Kingdom-Singapore Agreement, in particular any moves to negotiate an Investment Protection Agreement and a Digital Economy Agreement with Singapore.

Alongside the signing for the United Kingdom- Singapore Free Trade Agreement in December, the United Kingdom and Singapore jointly announced their intention to launch negotiations for a Digital Economy Agreement, allowing the United Kingdom and Singapore to strengthen our trading relationship. A Digital Economy Agreement between the United Kingdom and Singapore will aspire to deliver an ambitious model for international digital trade rules and cooperation.

United Kingdom-Canada Agreement

In December last year, we signed the United Kingdom Canada Trade Continuity Agreement – as well as an informal arrangement to cover preferences until their parliament has given the deal its formal approval. It meant our growing trade with Canada, from cars and beef to fish and gin, could continue uninterrupted, underpinning a trading relationship worth more than £20 billion.

Under the deal, most of the products United Kingdom businesses export to Canada remain tariff-free, with almost 99% of goods set to be covered by 2024. It provides certainty for key exports such as cars - we exported £757 million worth of cars to Canada in 2019 alone. The agreement secures that market, keeps a commitment to reduce tariffs to zero over time and supports a sector employing 168,000 people.

When fully in force, the agreement will also ensure that British companies can continue to benefit from the preferential access into the Canadian services and procurement markets and will ensure that the United Kingdom and Canada can continue to work towards recognising each other’s qualifications in areas like accountancy, architecture and law.

Entry into force

In the Report you welcome that the Memorandum of Understanding (MoU) with Canada was shared with Parliament swiftly and urge HM Government to give stakeholders real time updates on issues that unexpectedly arise in relation to agreements.

The Report also states that the Food and Drink Federation (FDF) criticises the Government for a lack of transparency with UK businesses regarding risks around timing.

The MoU provides transitional measures to mitigate the impact of the delay in implementing the United Kingdom-Canada agreement from 1 January 2021. These temporary arrangements will be in place until Canadian implementing legislation, and other domestic scrutiny processes on both sides, are complete. We expect this to take place in early 2021. The temporary arrangements include: Tariff-free trade maintained for United Kingdom and Canadian businesses exporting goods eligible for preferential treatment under the agreement; Access to Tariff Rate Quotas maintained for products covered in the agreement; Rules of Origin that enable EU content and processing to count as originating in the United Kingdom as set out in the agreement.

In the months leading up to the end of the transition period, we kept business stakeholders regularly informed about the status of the United Kingdom-Canada agreement and other continuity agreements, giving an as accurate a picture as possible to help businesses with their planning. After the MoU was signed, we published the text of the MoU and information for business on GOV.UK explaining changes to certain aspects of trade that would be applicable from 1 January 2021 until the United Kingdom-Canada agreement takes effect.

After entry into effect of United Kingdom trade agreements, we continued to engage with business stakeholders and respond to any concerns and issues raised by them in relation to the entry into effect of United Kingdom trade agreements.

Investor-state dispute settlement

In the Report, you urge HM Government to assess the impact of the absence of an investor-state dispute settlement mechanism, and you also welcome information on whether this mechanism would be part of an enhanced United Kingdom-Canada agreement, and if so, in what form.

The United Kingdom has negotiated investment protections provisions, backed by ISDS, with over 90 existing treaty partners and recognises the continuing important role that these provisions can play in safeguarding our investors abroad.

The Government is clear that when negotiating FTAs we will continue to protect our right to regulate in the public interest, including in such as areas as the environment and labour standards. This right to regulate is recognised in international law.

ISDS tribunals cannot overrule the sovereignty of Parliament, overturn or force any changes to law; they can only award compensation if a foreign investor’s rights under the treaty have been breached – for example, if the investor is found to have been treated in an arbitrary and discriminatory manner.

The Agreement on Trade Continuity between the United Kingdom and Canada (TCA) sets out that the Investment Court System (ICS)-related provisions will not come into force with the rest of the TCA, but instead will be subject to a comprehensive joint review (to be completed within three years, unless otherwise extended).

As ICS provided for by the Comprehensive Economic and Trade Agreement between the EU and Canada (CETA) is currently not operational there are no costs to be reflected in an impact assessment for the United Kingdom agreement. The relevant provisions have been suspended and therefore there will be no immediate impact from the introduction of the relevant provisions in the TCA.

Article V of the TCA commits both parties to a review of procedures for the resolution of investment disputes between investors and states. This article and subsequent negotiations are intended to allow the United Kingdom and Canada sufficient time to consider the options for dispute resolution for its investment provisions that are best suited to the bilateral relationship between the United Kingdom and Canada.

Looking forward

In the Report you call on HM Government to cover the liberalisation of the services sector in its objectives for the enhanced United Kingdom-Canada Agreement. You then call on HM Government to keep the Committee informed of any changes affecting these new negotiations.

In negotiating an enhanced free trade agreement with Canada, HM Government will seek an ambitious, liberal agreement tailored for the British economy and British interests. This will include building on existing commitments and seeking further liberalisation in trade in services, which accounted for 47% of all United Kingdom exports to Canada last year. In developing our negotiating objectives, we will consider any current barriers to trade across all services sectors, including transport and financial, and examine ways to address these barriers through an enhanced FTA. We will also examine the existing structure for mutual recognition of professional qualifications under the TCA, and consider ways in which we might improve this structure to support United Kingdom policy objectives. HM Government values scrutiny of the trade continuity programme and welcomes your Committee's report. I look forward to your future reports on our trade continuity agreements.

I am placing a copy of this letter in the House of Lords Library.

Yours sincerely,

Lord Grimstone of Boscobel, Kt
Minister for Investment
Department for International Trade
Department for Business, Energy and Industrial Strategy