



Department for International Trade

Baroness Fairhead

Department for International Trade
King Charles Street
Whitehall
London
SW1A 2AH

T +44 (0) 20 7215 5000

E fairhead.correspondence@trade.gov.uk

W www.gov.uk

The Rt Hon. the Baroness Kramer
House of Lords
London
SW1A 0PW

Our ref: MCB2019/00324

Dear Baroness Kramer,

29th January 2019

Further to the debate we had at Committee, I would like to confirm that most of the continuity agreements which the UK is transitioning do not include investment provisions. This is because the agreements were negotiated before the European Union gained competence for Foreign Direct Investment in 2009 when the Treaty of Lisbon entered into force.

As such, the question of handling of investment protection and investor-state dispute settlement (ISDS) provisions in continuity agreements applies only to the EU's agreements with Canada, Singapore and Vietnam, which were concluded after 2009.

In the case of the EU-Canada Comprehensive Economic and Trade Agreement (CETA), the UK has ratified CETA providing a clear signal that we are a constructive partner as a Member State of the EU. CETA's investment protection and dispute settlement (the so-called "Investment Court System" – ICS) provisions have not been provisionally applied. We are working with our Canadian partners on the investment provisions in CETA as part of our broader work on trade agreement continuity.

In relation to the EU's FTAs with Singapore and Vietnam, I can confirm that, in line with its broad approach to continuity agreements, the Government is working with Singapore and Vietnam to ensure continuity of the effects of the EU-Singapore and EU-Vietnam FTAs via a straightforward, technical process.

The investment protection and investor-state dispute settlement provisions in these FTAs were moved into parallel Investment Protection Agreements (IPAs) following a ruling of the Court of Justice of the European Union (CJEU) in May 2017. The CJEU held that, unlike other matters covered by the Common Commercial Policy which are EU-only competence, some aspects of investment policy, and investor-state dispute settlement (ISDS), are shared competence. This means that any agreements including such provisions would need to be ratified by all Member States and concluded by the EU before the agreement can enter into force.

Therefore, neither the EU-Singapore IPA nor EU-Vietnam IPA will enter into force until ratified by all EU Member States and the respective treaty partners and concluded by the EU. The European Commission has confirmed that it does not intend to seek provisional application and it is highly unlikely that it will enter into force before EU exit.

The question of our future approach to investment is a matter for discussion in the context of our bilateral relationships. In the meantime, continuity for investors is provided under the existing UK-Singapore and UK-Vietnam Bilateral Investment Treaties (BITs), which remain in place and fully in force. The question of our future long-term approach to investment protection and ISDS will be a matter for further discussions with the Governments of Singapore and Vietnam.

I take this opportunity to invite you once again to meet with me, alongside officials, to discuss the UK's approach to investment in trade agreement continuity and to address any further questions you may have. I am copying this letter to Lord Stevenson of Balmacara and Lord Purvis of Tweed. I am also placing a copy of this letter in the libraries of both Houses.

A handwritten signature in blue ink, appearing to read 'Janine', followed by a large, stylized flourish that extends across the width of the signature area.

Baroness Fairhead

Minister of State for Trade and Export Promotion

Department for International Trade