

EXPLANATORY MEMORANDUM ON THE BILATERAL AGREEMENT FOR THE PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE REPUBLIC OF COLOMBIA

Title of Agreement

Bilateral Agreement for the Promotion and Protection of Investments between the Government of the United Kingdom of Great Britain and Northern Ireland and the Republic of Colombia.

Command Paper Number: 8887

Subject Matter

Bilateral Investment Treaties (BITs) are international agreements between governments which can protect and encourage investment overseas. This Agreement provides for protection for UK investments in Colombia and on a reciprocal basis for Colombian investments in the UK. It was signed in Bogota on 17 March 2010.

Ministerial Responsibility

The Minister of State for Trade and Investment has responsibility for the implementation of this Agreement.

The Secretary of State for Foreign and Commonwealth Affairs has overall responsibility for UK policy relating to the UK's relations with Colombia.

Policy Considerations

(i) General

BITs aim to encourage investor confidence by setting high standards of investor protection in the host country. Unlike local laws on foreign investment which can change, BITs are of long duration and set standards applicable in international law which cannot be changed unilaterally. Key provisions in this agreement cover:

- non-discriminatory treatment, through provisions that ensure investors receive treatment not less favourable than both domestic investors and investors of another third state;
- market rate compensation in the event of expropriation;
- recourse to investor-to-state dispute settlement through independent international arbitration.

British investment in Colombia currently totals £2.5bn with further growth predicted. The BIT safeguards UK investments in Colombia. Between 2009 and 2012 UK exports of goods and services to Colombia rose by 126%. Colombia has demonstrated sustained economic growth over recent years and it is estimated there will be a further £60bn of spending on infrastructure over the next eight years and some £50bn investment in oil and gas in the next four years. This represents considerable opportunities, including in areas such as oil and gas, education, and science and innovation where British companies are traditionally strong. In February 2014, the UK and Colombian governments announced a target of £4bn in two-way trade and investment by 2020. As part of a wider series of initiatives aimed at deepening the bilateral economic relationship the BIT will support future investment by increasing the level of legal protection.

The Treaty of Lisbon brought Foreign Direct Investment under exclusive EU competence, meaning that the EU can now conclude international agreements on the protection of investment with non-EU countries. Under the 'grandfathering regulation' (Regulation (EU) No 1219/2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries) the UK received authorisation from the European Commission to bring the treaty into force.

(ii) Financial

The Agreement is not expected to pose any additional financial burden on the United Kingdom. To date, the UK has had 2 cases brought against it under its 94 existing BITs, both of which were unsuccessful.

Implementation

The Agreement will enter into force sixty (60) days after the date of receipt of the later of the two notifications by which the Parties shall notify each other of the completion of respective internal procedures required for entry into force of the Agreement. The Colombian Government have already notified the completion of their procedures. No new legislation is required to enable the UK to implement the Agreement. The 'one-in, two-out' rule is not applicable to this Agreement.

Consultations

BIS and FCO Legal led the negotiation of the Agreement with the Colombian Government whilst officials from other government departments including DFID, HMT, HMRC and MoJ were consulted closely throughout. NGO representatives were informed of the intention to conclude the Agreement following the UK receiving authorisation from the European Commission to bring the treaty into force.

Devolution

The Agreement applies in the case of the United Kingdom to England, Wales, Scotland and Northern Ireland. It can also be extended, by agreement between the Parties and subject to any modifications agreed, to any territory for whose international relations the Government of the United Kingdom are responsible.

A handwritten signature in black ink, appearing to read 'Lord Livingston of Parkhead', with a small flourish at the end.

Lord Livingston of Parkhead
Minister of State for Trade and Investment