House of Commons
International Trade Committee

UK investment policy

Seventh Report of Session 2017–19

Report, together with formal minutes relating to the report

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International Trade Committee

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Summary

The UK has long been both a leading source and destination for overseas investment. Foreign-owned companies in the UK are more productive and more likely to export than UK-owned firms; and foreign take-overs of UK firms can provide a range of benefits. Successive British governments have recognised the importance for the UK economy of international investment. Primary responsibility for international investment policy now rests with the Department for International Trade (DIT).

Foreign Direct Investment (FDI) involves acquiring assets that allow for control and ownership of a firm; such investment takes place over the longer term and is seen as “productive”. The measurement of FDI is usually seen as being of primary importance and a number of datasets are produced in this respect, by both official and unofficial bodies. Despite the importance of reliable information on such investment, there are significant limitations in the available data.

DIT’s figures relating to numbers of new FDI projects are of limited usefulness; and private-sector databases, which the Department partly relies on, can be opaque and may be of limited reliability. The Office for National Statistics (ONS) publishes data on the capital value of inward FDI—but does not separate out greenfield FDI (new investment) from mergers and acquisitions. ONS does wish to generate better statistics, possibly by reconciling its data with DIT’s. We recommend evaluation of the methodology employed by the US Bureau of Economic Analysis. The Government needs to be careful not to risk giving the impression of cherry-picking figures on trends in FDI. DIT should consider commissioning ONS to publish a regular comparison and synthesis of the various statistical data-sources on UK FDI.

Investment liberalisation means eliminating restrictions on the right of foreign investors to invest in a country; investment protection, by contrast, relates to provisions designed to guard against political risks faced by investors in host countries. Government policy in this regard comes under the portfolio of the Minister of State for Trade Policy.

Investment liberalisation provisions feature in multilateral and plurilateral agreements (involving multiple countries). Investment liberalisation and investment protection provisions are both found in International Investment Agreements (IIAs), which include: Bilateral Investment Treaties (BITs); and Treaties with Investment Provisions, including Free Trade Agreements. Investment protection provisions often grant investors the right to raise disputes on their own behalf against host states in cases of alleged violation of protection provisions (known as Investor-State Dispute Settlement—ISDS); this has proved hugely controversial.

The Government was unable to set out even basic lines of policy on post-Brexit UK IIAs. It needs to have a policy in place for the eventuality of a Brexit scenario in which there is no transition period—which could occur on 31 October 2019. We are alarmed that no such policy seems yet to have been formulated. The UK cannot just go back to the approach it used before 2009 (when negotiating such treaties became a formal EU competence). The Government should clarify where it stands on investment protection.
standards and dispute resolution mechanisms for investors. It must carefully consider and fully evaluate specific alternatives to conventional ISDS provisions and consider including in IIAs provisions to counterbalance investor rights.

Investment promotion involves marketing a particular location or industry in a host country as a destination for inward investment; investment facilitation, by contrast, involves measures to make it easier for investors to invest. DIT has a reputation as one of the world’s leading investment promotion agencies. However, it has been very difficult to form a coherent overall picture of all the facets of the Government’s approach to investment promotion and investment facilitation. DIT should publish an overarching strategy (in a similar format to that of the 2018 Export Strategy), explaining clearly how all the different aspects fit together.

The Government must develop a one-stop shop for business registration and a “single electronic window” (to enable investors to send documentation to several government bodies in one submission). DIT works together with partner organisations at the devolved and local levels in respect of investment promotion and investment facilitation, but there needs to be more joined-up governance. The Government should also show that it is working closely with the university sector in attracting inward investment.

The roles of HM Trade Commissioners, the Prime Minister’s Trade Envoys and UK Business Ambassadors in relation to investment must be spelled out. There is clear evidence that cuts in DIT’s overseas representation have had a negative impact and the Government should ensure that sufficient resources are available for this purpose. In addition, the promotion and facilitation of outward investment should continue to form a key part of the Government’s investment strategy.

DIT partly measures its performance by the number of successful inward investment projects with which it is involved. The Government should do more to demonstrate that its efforts are directly responsible for those investment successes for which it seeks to claim credit. Work by DIT to gauge the impact of FDI in terms of Gross Value Added (GVA), as an aid to targeting its efforts, is potentially welcome—provided the measure of GVA used is sufficiently robust. The Government should also go further than developing this measure, to produce data on the impact of different types of FDI, and develop devolved-nation and regional targets for investment, as well as net targets for the capital value of investment flows and numbers of associated jobs. The targets used in the Republic of Ireland are a possible model. The Government should also place greater emphasis on attracting investment in high-value sectors.

We welcome the Government’s support for an Investment Facilitation Agreement through the World Trade Organization. It must also consider the potential inclusion of investment facilitation provisions in bilateral IIAs.

While the UK has one of the most liberalised investment regimes in the developed world, there is still a need for some degree of regulation in respect of inward investment. Although the 2017 Conservative Manifesto expressed opposition to inward investment “driven by aggressive asset-stripping or tax avoidance”, there has been no indication of action to implement this. The Government should set out what it considers to constitute economically harmful investment—and state how it plans to act against it.
We recommend that the Government provide more clarity on how the balance will be struck between promoting and facilitating inward investment, on the one hand; and safeguarding national security, on the other. It must set out what the role of DIT will be in the envisaged new investment screening regime—as well as which Cabinet minister will take the ultimate decision on blocking an investment.
1 Introduction

1. Investment involves the acquisition of assets in the expectation that they will yield profitable returns, by means of appreciation in value or the generation of some form of future income. Where persons or organisations from one jurisdiction undertake such activities in another jurisdiction, this is referred to as international, or cross-border, investment.

2. For nearly two decades after 1990, during what has been called “the golden age of globalisation”, the scale and scope of such investment increased dramatically. International investment was said to have “spearheaded globalisation”, growing twice as fast as international trade did during 1990–2008. Since the world financial crisis of 2008, there has been a long-term trend of only “anemic growth” in worldwide inflows of Foreign Direct Investment (FDI—where an overseas investor has ownership of, or a controlling stake in, a business). Nevertheless, cross-border investment remains a major factor in the global economy; and the UK has long been both a leading source and destination for overseas investment.

3. As we heard, it is well evidenced that foreign-owned companies in the UK are more productive and more likely to export than UK-owned firms; and foreign take-overs of UK firms can save jobs and productive capacity, lead to the transfer of knowledge and technology, and provide links to global value chains. Successive British governments have recognised the importance for the UK economy of international investment and have pursued policies accordingly. Under the present Government, primary responsibility for policy relating to international investment rests with the Department for International Trade (DIT). This area of the Department’s work is of considerable importance—both in its own right as well as in terms of its close linkage to trade. As a result, we launched this inquiry in May 2018 to scrutinise DIT’s performance in this area.

4. The role of government in relation to international investment encompasses the following four policy aspects, each of which we have addressed in this report:

- investment liberalisation: the elimination of restrictions on the ability of overseas investors to invest in a particular country (see Chapter 3);
- investment protection: measures to safeguard investors’ property, interests and rights (see Chapter 3);
- investment promotion: activities that seek to market a country to inward investors, including particular geographical locations or economic sectors within that country (see Chapter 4); and
- investment facilitation: policies that actively assist inward investors in beginning or continuing to invest in a country, including in particular locations or sectors (see Chapter 4).

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1 “Globalisation has faltered”, The Economist, 24 January 2019
2 “The crisis and its impact on cross border investment”, speech by Angel Gurría, Secretary-General of the Organisation for Economic Cooperation and Development, 2 June 2009
3 UN Conference on Trade and Development, World Investment Report 2019: Special Economic Zones, June 2019, p 14
4 Qq203, 279, 281
5 Qq21, 70
Some of these functions have been inherited by DIT from a previously existing government body, UK Trade & Investment (UKTI), while others relate to powers that will be repatriated to the UK from the EU after Brexit.

5. As well as looking at these areas, we also examined how international investment is defined and measured, given its relevance to policy making (see Chapter 2); and how inward investment into the UK should be regulated (see Chapter 5). In addition, as well as examining the role of DIT in relation to international investment, we have looked at the part played by other official bodies, both within central government and outside it, including the Office for National Statistics (ONS), other government departments and the Devolved Administrations (DAs).

6. At an early stage of our inquiry, we received a very helpful informal briefing from officials of DIT and the ONS, along with Dr Lauge Poulsen, of University College London. Over the course of four evidence sessions, we heard from 21 witnesses, including the Minister for Investment, Graham Stuart; the Directors General for Investment and Trade Policy at DIT; and the Deputy National Statistician and Director General for Economic Statistics at ONS. Our witnesses also included academic experts, business representatives and non-governmental organisations. In addition, we received 22 submissions of written evidence. We would like to thank all those who took the time to provide us with evidence.

7. In connection with the inquiry, we undertook in October 2018 a visit to Japan and the Republic of Korea in order to understand the perspectives both of those investing in the UK and countries that receive UK investment. In Japan, we met: investors and trade association bodies from the Japanese automotive, financial services, ICT and Life Sciences sectors; the British Chamber of Commerce Japan and leading UK businesses; Fujitsu; GSK; the Komeito party (a partner in the governing Coalition); the Ministry of Economy, Trade and Industry; and a number of large trading houses and other capital investors. We also attended a reception held by the British Market Council. In Korea, we spoke to: the Korea Trade-Investment Promotion Agency; Samsung Electronics; the Trade, Industry, Energy, Small Businesses and Start-ups Committee of the National Assembly; Samsung Construction & Trading; and the Korea District Heating Corporation. We would like to record our thanks to HE Paul Madden and HE Simon Smith, HM Ambassadors in Tokyo and Seoul respectively, and to all the staff of DIT and the Foreign and Commonwealth Office (FCO) at both embassies, whose hard work ensured that our visit was successful and enlightening. We are also very grateful to everyone who took the time to meet us in Japan and Korea. The discussions we had during the visit provided us with invaluable insights which greatly informed our subsequent taking of evidence from witnesses.
2 Defining and measuring overseas investment

8. During the course of our inquiry, it became clear that there are a variety of ways in which overseas investment can be measured; and different claims can be made about the levels of inward investment during a particular period, depending on the measure used. Given that data around levels of investment, and the conclusions drawn therefrom, can affect policy-making, we considered it important to give some consideration to the data published by DIT and others.

Types of overseas investment

9. In measuring overseas investment, a distinction is usually made between: Foreign Portfolio Investment (also referred to as “indirect investment”); and Foreign Direct Investment. Professor Richard Kneller, of Nottingham University, explained that “Portfolio investments tend to be in stocks and bonds whereas foreign direct investment tends to be into a particular business.” In addition, he described the central motivation for portfolio investment as being to obtain “some sort of short-term financial gain”; whereas FDI was driven by a desire to “to acquire assets that allow for managerial control and ownership of the firm” and was hence “more of a longer-term investment”. Portfolio investment was thus associated with much more liquid assets than FDI. Dr Lukas Linsi, of Amsterdam University, told us that portfolio investment could be thought of as “speculative”, whereas FDI, on the other hand, could be seen as “productive” investment.

10. Dr Linsi also told us that, while the distinction between portfolio investment and FDI was clear and straightforward at the conceptual level, applying it in practice, so as to generate statistics, was more problematic. Given the large numbers of investments involved, it was not practically feasible to try and evaluate on a case-by-case basis what an investor’s motivation was. Consequently, statisticians had introduced a convention whereby any investment involving less than 10% of a company was classified as a portfolio investment; and any investment involving more than 10% was deemed to be an instance of FDI. DIT, among many others, adheres to this convention. Dr Linsi, though, saw it as arbitrary and potentially misleading. It led to investments by large funds being misclassified as FDI instead of as portfolio investment. Likewise, “pass-through funds” that were “being shifted through offshore jurisdictions” were also erroneously counted as FDI as a result of the 10% rule.

11. Dr Linsi further explained that FDI could be broken down into three categories. Firstly, there was “greenfield FDI”, which was “probably the kind of transaction that we typically have in mind when we think about FDI”. This was exemplified by “a company from abroad building a new factory from scratch. We can think of Huawei from China buying a piece of land in Scotland or somewhere else and building a new semiconductor plant.” The second type was mergers and acquisitions FDI, “the takeover by a foreign investor of an already existing company”, a “classic example” of which had been “when Kraft from the US took over Cadbury”. Thirdly, there was “special-purpose entity FDI”, involving
“holding company structures”, known as “letterbox companies or shell companies”. Dr Linsi suggested that a typical example of this third kind of FDI was Amazon, which “is very eager to shift as much of its products as possible through Luxembourg because then it has to pay less tax.”

**Measuring FDI**

12. The measurement of FDI is usually seen as being of primary importance, given its association with productive investment; and a number of datasets are produced in this respect, by both official and unofficial bodies. However, Dr James X Zhan, Director of the Investment and Enterprise Division at the UN Conference on Trade and Development (UNCTAD), has noted that “the scarcity, unreliability and inconsistency of FDI data pose a serious challenge for policy-makers, academics and practitioners”—and we found this was reflected in our evidence.

**Data on inward FDI projects**

13. A standard way of measuring inward FDI is by number of FDI projects (i.e. new or expanded businesses that are wholly or partly owned by overseas investors). DIT publishes statistics by financial year concerning FDI projects that successfully “land” in the UK and the estimated number of jobs thereby created or safeguarded. DIT aims to record all inward FDI projects that meet its eligibility tests (which include the 10% rule).

For projects it has been involved in, it draws upon data that it holds itself; and regarding those projects in which it has not assisted, it uses data collected by private organisations, as well as “local sources (e.g. media, events)”. Each project is subject to a verification process, prior to being confirmed as a “success”, to ensure that it meets eligibility criteria and is genuine; in addition, the quality of data is assessed.

14. DIT states that the external databases it consults on inward FDI projects include fDi Markets (provided by the Financial Times as part of its fDi Intelligence portfolio of products and services); and the European Investment Monitor (provided by the professional services company EY / Ernst & Young). However, the statistics produced from these databases are not the same as DIT’s, due to “methodological differences”.

15. Dr Henry Loewendahl (CEO of the company WAVTEQ and Senior Vice President representing fDi Intelligence) worked on developing, and continues to be involved with, the fDi Markets database, which specifically tracks greenfield FDI projects. He told us that the data produced by the private sector included “a lot of estimates of capital investment and job creation” that “may not always be very accurate”. He thought that “It really should

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be the role of DIT to be making sure it has a very accurate dataset”, but DIT was drawing on private sector estimates of job creation that were in fact “rather suspect”; the actual figures were likely to be “very different.”

16. Dr Loewendahl further told us that there was “a huge problem with the DIT data”, in that “they do not track how many companies close down or how many companies downsize”. He likened the Department to the head of a business who told their shareholders that “We won all these new clients this year’ but I am not going to tell them how many we lost. You would not survive very long as a business.”

17. We put Dr Loewendahl’s points to the Secretary of State for International Trade, Rt Hon Dr Liam Fox, when he appeared before us in March 2019. He told us: “We can only make judgments on the data that is available and whether that is kept centrally or not”. He stressed that “One of our big problems […] is access to trade data and business data” which “does need to improve”. One of the features of recent legislation had been “to give us better access to that data.” He said that “If we are able to improve our database we will”.

18. The usefulness of project numbers as the main measure of FDI has been doubted by several ministers. The then Investment Minister, Mark Garnier, conceded in September 2017 that it put on the same level establishing a new factory costing £50 million and “opening a chip shop in Barnsley for £50,000”. Greg Hands, the then Trade Policy Minister, made a similar admission to us in March 2018, but noted that this form of measurement was “the internationally accepted norm in this space”. When the present Investment Minister, Graham Stuart, gave evidence to us in June 2019, he told us that he had been sceptical when told that measurement by project numbers was the global standard: “I thought that was mad.” He had, though:

...come around rather more to recognising the utility of the project number, because everything else is so hard and elusive to get hold of. As long as you measure the same thing over time, at least you get a decent sense of trend.

Nonetheless, the Department was now looking at also measuring the value of FDI in terms of Gross Value Added (GVA): “We are doing work on that and we hope we will be able to publish details on that, going forward […] we want to work out the real economic value”. He admitted that it was “extraordinarily elusive, but we have got a lot of people working on it and I hope that we will be able to share results of that with you in due course.” The use of GVA in this way relates particularly to the targeting of investment promotion and investment facilitation, which we consider under that heading in Chapter 4.

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16 Q41
17 Q41
18 Q45
19 Shortly after this report was agreed by the Committee, on 24 July 2019, Dr Fox was succeeded by Rt Hon Elizabeth Truss as Secretary of State for International Trade and President of the Board of Trade.
20 Oral evidence taken on 6 March 2019, HC (2017–19) 436, Qq819, 821
21 HC Deb, 12 September 2017, cols 223–4WH
22 Oral evidence taken on 7 March 2018, HC (2017–19) 481-vii, Q382
23 Q245; see also Q297.
Data on FDI flows, stocks and earnings

19. The ONS measures FDI in a different way. It publishes data by calendar year relating to the financial value of both inward and outward UK FDI in respect of:

- flows—the amounts of FDI passing in and out of the country during the year (shown on a net basis, i.e. investments minus disinvestments);
- stocks / positions—the total value of FDI accumulated over the long term, measured at the end of the year, consisting of outward position (UK-owned assets abroad) and inward position (assets held in the UK by non-resident enterprises); and
- earnings / profits—income from FDI during the year, consisting of earnings on UK assets abroad and earnings by non-resident enterprises on assets held in the UK.24

20. Two international organisations, UNCTAD and the Organisation for Economic Co-operation and Development (OECD), publish data on UK FDI stocks and flows derived from the published ONS figures, as part of global FDI datasets. Jonathan Athow, Deputy National Statistician and Director General for Economic Statistics at ONS, did, however explain that UNCTAD “tends to take an early version of our data, our initial estimates” and that “sometimes they will not have the most up-to-date numbers.”25

21. Mr Athow told us that ONS’s work on FDI was focused on the “balance of payments: how much money is flowing in and out of the UK”; this was then attributed to FDI, portfolio investment “or other flows”.26 The data was obtained by surveying companies identified from a business register as having “foreign parents or foreign subsidiaries”.27

22. DIT has identified a number of “limitations” in the ONS data. Being “dominated by mergers and acquisitions”, they “can be very volatile and cyclical”; and they are “prone to revisions”. Since they do not record the ultimate investing country, they “can be distorted by trans-shipping or ‘pass-through investment’”. And there are “asymmetries” between ONS’s records on outward investment to particular countries and the destination countries’ corresponding data on inward investment from the UK.28

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24 Q6; Office for National Statistics, “An analysis of Foreign Direct Investment, the main driver of the recent deterioration in the UK’s Current Account: January 2016”; Department for International Trade, Inward Investment Results 2016–17, July 2017, p 15; Department for International Trade, Estimating the economic impact of FDI to support the Department for International Trade’s promotion strategy: Analytical report, June 2018, pp 13–15; Department for International Trade, Inward Investment Results 2018–19 Technical Annex, June 2019, p 11. FDI data can be presented on an asset and liability basis (where the focus is on FDI as a constituent of the Balance of Payments) or on a directional basis (where the primary focus is on FDI as such) – Q7; Department for International Trade, Trade and Investment Core Statistics Book: Technical Annex, November 2018, p 18; Office for National Statistics, “Foreign direct investment involving UK companies: 2017”, December 2018. ONS publishes FDI data of both kinds, but in this report we are only concerned with that which is compiled on a directional basis.

25 Department for International Trade, “Overview of other data sources for inward FDI”, June 2019; UN Conference on Trade and Development (UIT0022); Q31

26 Q32

27 Q31

23. Mr Athow acknowledged that distinctions between greenfield and other types of investment could not be determined from ONS’s data, which were comprehensive but often lacked detail. The Office would like to work with DIT to achieve “a much more granular understanding of what is going on”. He explained that it was, though, “a challenge for us, as statisticians, to think about how we bridge [the] gap” between ONS’s “top-down” figures (derived from the balance of payments) and the “bottom-up” figures on project numbers compiled by DIT.29 He also told us that, while “many companies want to work with us”, it was a challenge to reconcile commercial data with that from other sources;30 and constructing long-run datasets from private-sector sources was difficult, given the discontinuities that were involved when it came to that sector.31

24. Dr Loewendahl stressed to us the importance of being able to separate out different types of FDI in data on flows:

When you look at the top-level numbers in most developed economies, basically what you are seeing is who has been most successful in selling their corporate assets to other foreign companies, because most of it is [mergers and acquisitions].32

This applied to the UK. Expected UNCTAD data that showed sharply rising UK FDI inflows, and falling FDI outflows, for 2018 would lead, Dr Loewendahl thought, to “everyone talking about how amazing the UK is […] but it is all driven by [mergers and acquisitions]”.33

25. Dr Loewendahl noted that the US was the “first country in the world and the only country in the world” thus far to distinguish greenfield investment from mergers and acquisitions in statistics on FDI flows. The US Bureau of Economic Analysis (BEA) had begun publishing such data in 2017, revealing that 97% of US inward FDI in 2016 was accounted for by mergers and acquisition. The US data also distinguished between new investments and the expansion of existing investments, and gave figures for associated employment.34 Dr Linsi also noted that the BEA had for a long time been tracking Special Purpose Entity FDI. (He believed that ONS had “some experimental statistics” that also attempted to capture this.)35 Mr Athow said that ONS would like to “replicate what the BEA does” in this regard.36

26. When Dr Fox appeared before us in March 2019, he admitted that “you can get big distortions in inward investment from M&A activity” and offered to share “any detailed information that we have on any disaggregation of that data, for which we hold quite a lot”.37 However, when he subsequently wrote to us about this he did not state what the Government was doing to obtain better data in this regard.38

29 Q32
30 Q33
31 Q34
32 Q32
33 Q58
34 Q36
35 Q5
36 Q40
37 Oral evidence taken on 6 March 2019, HC (2017–19) 436, Q818
38 Rt Hon Dr Liam Fox MP to Angus Brendan MacNeil MP, 4 April 2019
Recent trends in inward FDI

27. The headline figures on inward FDI projects that have been published by DIT since it took over responsibility for publishing these data from UKTI, in 2016, are shown in Table 1.

Table 1: DIT data on inward investment results

<table>
<thead>
<tr>
<th>Year</th>
<th>FDI projects</th>
<th>New jobs created</th>
<th>Safeguarded jobs</th>
<th>Total jobs</th>
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<tr>
<td>2015–16</td>
<td>2,213</td>
<td>82,650</td>
<td>33,324</td>
<td>115,974</td>
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<td>2016–17</td>
<td>2,265</td>
<td>75,226</td>
<td>32,672</td>
<td>107,898</td>
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<td>2017–18</td>
<td>2,072</td>
<td>75,968</td>
<td>15,063</td>
<td>91,031</td>
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<td>2018–19</td>
<td>1,782</td>
<td>57,625</td>
<td>6,998</td>
<td>64,623</td>
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</table>

Sources: Department for International Trade, DIT inward investment results: Summary of FDI projects and jobs 2017 to 2018, June 2018; DIT inward investment results: Summary of FDI projects and jobs [2018 to 2019], June 2019

Table 2 contains the headline figures published by ONS on inward and outward UK FDI for calendar years from 2015 to 2017 (the most recent year for which finalised data have been published). Mr Athow said to us that it was difficult to tell much regarding recent trends from ONS’s dataset on FDI flows, since the data had been distorted by some large-scale purchases of UK companies in 2016, as well as abnormally high mergers and acquisitions activity in 2017.

Table 2: ONS data on inward and outward FDI (£ billion)

<table>
<thead>
<tr>
<th>Year</th>
<th>Flows</th>
<th>Positions</th>
<th>Earnings</th>
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<tr>
<td></td>
<td>Inward</td>
<td>Outward</td>
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<td>Inward</td>
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<tr>
<td>2015</td>
<td>25.3</td>
<td>-42.9</td>
<td>1,032.5</td>
</tr>
<tr>
<td>2016</td>
<td>192.0</td>
<td>-27.7</td>
<td>1,187.3</td>
</tr>
<tr>
<td>2017</td>
<td>92.4</td>
<td>91.4</td>
<td>1,336.5</td>
</tr>
</tbody>
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Source: Office for National Statistics, Foreign direct investment involving UK companies: 2017, December 2018

28. It is easy to see how a variety of claims can be made about trends in UK inward FDI using these data. For example, it is true that in 2017, the UK’s position (stock) of inward FDI was higher than in 2015—by almost 30%. At the same time, it also true that in each year since 2015–16, the number of jobs created and safeguarded by FDI projects has fallen.
29. As we have noted, there are also various non-official sources of data on UK FDI—and these are often cited by the Government. So far this year, for instance, DIT has cited data published by Deloitte,\(^\text{40}\) UNCTAD\(^\text{41}\) the OECD,\(^\text{42}\) fDi Intelligence\(^\text{43}\) and EY\(^\text{44}\) on trends in UK inward FDI and comparisons between the UK and other countries in this respect. In so doing, the Government has presented a positive picture of UK inward FDI trends in the context of Brexit. For example, the Minister for Investment told the House in March this year that:

This is a truly grim and sad time for those who want to see our departure from the EU lead to a collapse in investment and exports, as instead we have seen the exact opposite. We had record levels of foreign direct investment in this country.\(^\text{45}\)

In the same month, the Secretary of State told us that, while domestic investment decisions had been held back because of uncertainty around Brexit, “foreign direct investment into the UK, including from Europe, has been very strong because we have strong economic fundamentals”. Investors saw the UK’s low unemployment rate and “all the advantages we have in a flexible workforce and our universities, access to tech and so on, which makes [the UK] a good bet for the long term”.\(^\text{46}\) Officials at the UK Embassy in Tokyo, meanwhile, assured us during our visit there that the UK’s advantages in terms of matters such as the predominance of the English language and the established rule of law would not change because of Brexit. However, we did hear some less sanguine views from other quarters.

30. Professor Kneller told us that FDI could be seen in terms of: horizontal motives (replicating a business model abroad); vertical motives (hosting parts of a production process abroad); and export platform motives (using a foreign country as a base to sell into another market). The determinants of FDI that affected these models included “infrastructure and taxation and corporate taxes but also tariffs, labour costs, human capital and so on”; other “key determinants” were “the size of the markets and how wealthy firms and businesses in those markets are”. Professor Kneller suggested that, in a “post-Brexit world” where tariffs potentially arose between the UK and the EU, export-platform and vertical-motive FDI were bound to be affected, due to the impact on “the ability to move the different components, the different intermediate inputs across national
borders”. In Tokyo, we heard that this model applies to Japanese investors, who use the UK as a “gateway” to export to the rest of the EU and are hoping for as frictionless trade as possible after Brexit, as well as some commonality of rules. The lack of certainty about the terms of Brexit was very concerning for Japanese businesses and making investment decisions difficult. We similarly heard in Seoul that the lack of certainty was what most troubled Korean companies about Brexit.

31. Courtney Fingar, Editor-in-Chief of fDi Magazine (which is published by the Financial Times as part of its fDi Intelligence portfolio), told us that UK “greenfield FDI, real FDI” was typically “not very volatile”, as it rested on “long-term decisions and the UK has been a strong performer throughout the years”. She argued this was less down to favourable levels of corporation tax than to matters such as the UK’s skills base. Ms Fingar stated that:

The only thing that has dented or had any significant impact on the UK’s attraction of greenfield investment has been the referendum to leave the European Union, where we saw a sudden and very notable decline in greenfield FDI.

She went on to explain that the UK had been “one of the best and most reliable performers for greenfield FDI over the years”, even after the 2008 financial crisis; but there had been a 38% decrease in greenfield FDI in 2016; and a 10% decline in 2017. Conversely, she thought that the decline in the exchange value of the pound since the Brexit referendum had been a factor in the continued strength of inward investment in the field of mergers and acquisitions.

32. Dr Serwicka reported that her analysis of the fDi Markets database revealed there had been a fall in numbers of greenfield investment projects since 2016 of around 10%. She admitted that there was “some level of doubt” as to whether this could be attributed to Brexit, but “we believe so because of the timing”. Dr Serwicka had not yet been able to determine whether this reduction was due to investments being delayed, due to present uncertainty, or permanently cancelled.

33. Dr Loewendahl added that: “From 2015 to 2018, the number of FDI projects, greenfield projects in the UK, declined by 25%. The number of manufacturing jobs created by FDI and the capital investment associated with those investments is down over 50%.” The fact that “the projects have gone down lower than the jobs and the capital investment” indicated “that some projects are being put on hold”. Investment in the UK had gone from “a very high level down to still a high level, higher than most other countries in Europe. It is not doom and gloom.” Notably, though, “Financial services FDI and greenfield

47  Q8
48  See also Honda Motor Europe (UIP0021).
49  Q12
50  Q14
51  Q15
52  Q42, 47
53  Q43
54  Q48
55  Q48
56  Q49
investment has boomed in 2017 in the Netherlands, France, Germany, Switzerland and Ireland”, which Dr Loewendahl suggested was down to companies moving their operations due to Brexit.\textsuperscript{57}

34. The Institute of Directors (IoD) stated in evidence that “It is at this stage difficult to gauge even the potential effect of Brexit on future investment flows to and from the UK.” Many businesses were waiting “until the road ahead becomes clearer before making any substantial investment decisions.”\textsuperscript{58}

35. When the Investment Minister appeared before us in June 2019, we asked him about OECD data showing that UK inward FDI flows had fallen by a third in 2018.\textsuperscript{59} He responded that “flow goes up and down. That is the nature of things. The better measure to judge how we are performing as a nation—although flow should form part of our understanding—is to look at stock.”\textsuperscript{60} He advised against seeking “specific reasons” for fluctuations in flow from year to year; rather than constructing “a narrative to fit your particular political view”, one should accept “that it is primarily down to big global forces and patterns of investment”.\textsuperscript{61} We also put to the Minister the fact that, according to the OECD data, in 2018 the Netherlands overtook the UK as the third largest recipient of FDI inflows. He argued that not too much should be read into the “technical overtaking of the UK in that one particular year”. He reiterated that the more important measure was inward FDI stock, which was higher in the UK. Also, large numbers of “special purpose vehicles and other financial vehicles” were based in the Netherlands, meaning that there was “some uncertainty” as to how far inward FDI flows represented “actual investments that employ real people”.\textsuperscript{62} The OECD data does, however, explicitly exclude resident Special Purpose Entities in the Netherlands.\textsuperscript{63}

36. The Minister noted that global FDI flows had fallen by 19% in 2018.\textsuperscript{64} He said that “in terms of global flows, it has been a challenging environment of late. I would just say, objectively, particularly in the context of Brexit, that the UK’s performance is pretty remarkable.”\textsuperscript{65} Regarding UK inward FDI stock, he told us that this was at record levels;\textsuperscript{66} and, according to the OECD, UK inward FDI stock had grown by 5% in 2018.\textsuperscript{67} In subsequent correspondence, he stated that “The growth in stock in the UK contrasts with net FDI disinvestment both in Europe and globally in 2018.” He noted that “Investment flows into the UK declined in 2018”, but this was just a case of normal volatility. Previous falls in 2014 and 2011 had not raised “concerns around the fundamental attractiveness of the UK economy”. Also, the UK’s share of European investment had remained stable.\textsuperscript{68}

37. The Minister insisted to us that the UK led Europe in respect of “stock, flow, projects, greenfield, capital expenditure, and new jobs”, according to UNCTAD, the OECD, EY and fDI Markets. UNCTAD had found the UK to be third in the world for FDI stock, behind

\textsuperscript{57} Q49; see also Q52.
\textsuperscript{58} Institute of Directors (UIP0015)
\textsuperscript{59} Organisation for Economic Co-operation and Development, “FDI in Figures”, April 2019, p 3
\textsuperscript{60} Q203
\textsuperscript{61} Q204
\textsuperscript{62} Q216
\textsuperscript{63} Organisation for Economic Co-operation and Development, “FDI in Figures”, April 2019, p 3
\textsuperscript{64} Q214. This statistic derives from UNCTAD’s Global Investment Trends Monitor no. 31, January 2019.
\textsuperscript{65} Q234
\textsuperscript{66} Qq218, 220
\textsuperscript{67} Q213
\textsuperscript{68} Graham Stuart MP to Angus Brendan MacNeil MP, 28 June 2019
only the US and China. EY’s Global Capital Confidence Barometer survey of global executives had found that respondents named the UK as the most attractive destination in the world for mergers and acquisitions, for the first time in the 10 years over which the survey had been conducted.69

38. We questioned the Minister closely about a recent report in the Financial Times based on fDi Markets data. This stated that the value of capital invested in greenfield FDI projects in the UK had fallen by 30% in the three years to the first quarter of 2019, whereas in the rest of the EU it had risen by 43%. A representative of fDi Markets was reported to have said it was “clear that neighbouring countries are beginning to reap the benefits of the uncertainty being caused by Brexit.”70 Mr Stuart replied that the fDi Markets database also showed that in 2018 “the UK had more than twice as many new greenfield investments […] than Germany and France put together”.71 In the same year, according to the same source, “UK FDI greenfield projects grew by 19%, and capital expenditure by 38%”.72 The Director General for Investment at DIT, Mark Slaughter, added that the Financial Times’s analysis was narrowly focused on “a market share diminishment of the capital associated with new greenfield investment”.73 In his subsequent letter, the Minister wrote that the Financial Times had used “a particular time period and data point” which “provided an especially stark difference” between the UK and the rest of the EU, “because 2015 was an outlier year”. While the UK’s market share for greenfield FDI capital expenditure had “diminished” in recent years, the country had consistently remained “the single highest grossing individual country” in this respect.74

39. We also asked the Minister about the EY Attractiveness Survey, which showed that in 2018 there had been a 13% fall in UK inward FDI projects—with a 35% fall in manufacturing projects. EY also found that 15% of inward investors surveyed had paused or stopped investment in the UK specifically due to uncertainty around Brexit.75 Mr Stuart repeated that what mattered was the record level of UK inward FDI stock and the fact that the UK had received more inward greenfield FDI projects in 2018 than Germany and France combined.76 He suggested that “If you are determined to find a negative Brexit explanation, you can cherry-pick the data.”77

40. Referring to ONS statistics on UK inward FDI flows, the Minister said that this was the “most definitive” dataset.78 However, preparation of the statistics took nearly a year; thus, the data for 2018 would not be published until December 2019.79

41. In his letter, Mr Stuart mentioned that DIT’s latest data on UK inward FDI projects showed a decline of 15% in 2018; this was “broadly in-line with” EY’s Attractiveness Survey and reflected “the context of global declines in FDI”. It illustrated “the complexity of interpreting FDI data that is collected in different ways and fluctuates over time”, but

69 Q215; see also Department for International Trade, Annual Report and Accounts 2018–19, HC (2017–19) 2229, p 7.
70 “Brexit uncertainty drives investment boost for other EU countries”, Financial Times, 10 June 2019
71 Q206
72 Q213
73 Q231
74 Graham Stuart MP to Angus Brendan MacNeil MP, 28 June 2019
75 EY, Tipping point: EY Attractiveness Survey UK, June 2019
76 Q218
77 Q224
78 Q220
79 Qq210–212
it was “clear that the UK remains the leading destination for investment in Europe”, whether measured in terms of projects or stock. He noted that “Echoing the conclusions in the recent UNCTAD World Investment Report, DIT has observed no clear impact of Brexit on FDI levels in the UK.”

Conclusions and recommendations

42. Appropriate and effective Government policies in respect of Foreign Direct Investment can only be formulated on the basis of reliable information on the nature and extent of such investment, and how it varies over time. However, there are significant limitations in the data which the Government collects and publishes in this regard.

43. Figures published by the Department for International Trade relating to numbers of new projects, and of jobs associated with them, are of limited usefulness, given that the Department does not monitor closures of companies associated with inward investment, or downsizing by such companies. We recommend that the Department should consider what steps it can take to make good these deficiencies in its data and report to us on this by the end of this year.

44. The Department also relies in part on data from private-sector databases, which can be opaque and may be of limited reliability. Where the Department does draw on any private-sector datasets in constructing its own statistics, we recommend that, so far as possible, it should seek and publish information about the sources and methodology employed by the bodies concerned.

45. The Office for National Statistics publishes data on the capital value of inward Foreign Direct Investment—but it does not separate out greenfield investment from mergers and acquisitions, or from investment through Special Purpose Entities. We note the Office’s desire to generate better data in this regard, possibly by finding ways of reconciling its “top-down” figures (derived from the Balance of Payments) with the “bottom-up” data (relating to specific investment projects) that is gathered by the Department for International Trade. We recommend that the two departments report to us, by the end of this year, on what they are doing to develop such collaboration. We also recommend evaluation of the methodology employed by the US Bureau of Economic Analysis as a possible model for generating a reliable dataset on the capital value of the different categories of inward Foreign Direct Investment.

46. The Government regularly cites statistics on Foreign Direct Investment from various sources; in doing so, it needs to be careful not to risk giving the impression of cherry-picking figures so as to convey the most favourable impression possible. In the presentation of investment data, care must be taken always to give the full picture, with clear distinctions made between: stocks and flows of investment, greenfield investment, and mergers and acquisitions; and year-on-year changes and multi-year trends. We recommend that the Department for International Trade should consider commissioning the Office for National Statistics, or some other appropriate body at arm’s length from the Government, to publish on a regular basis a comparison and synthesis of the various statistical data-sources on UK Foreign Direct Investment, to give the fullest possible picture of trends and developments.
3 Investment liberalisation and investment protection

47. Both investment liberalisation and investment protection—and the extent to which they are pursued—are key aspects of investment policy. Provisions relating to both feature in a range of international agreements that regulate the terms under which international investment takes place. These include multilateral and plurilateral agreements on investment (involving groups of countries), as well as International Investment Agreements (IIAs), which tend to be bilateral (involving just two states). As the UK leaves the EU, it takes back responsibility for these two areas of investment policy—the Union having formal competence in respect of issues around FDI.

48. Dr Axel Berger, of the German Development Institute, explained to us that “Investment liberalisation means that foreign investors have a right to invest”, so the host state does not “have the right to choose which investors should come into the country and which should not”. (Investment liberalisation is sometimes referred to in terms of permitting “market access”). Where investment liberalisation is enshrined in international agreements, it often takes the form of “pre-establishment” (or “right of establishment”) provisions. These include granting investors the right to invest on the same terms as domestic firms (“national treatment” provisions) or on the same basis as other foreign investors (“Most Favoured Nation” provisions—MFN). Investment liberalisation provisions can also include the elimination of performance requirements, i.e. conditions attached to foreign investors by host states, such as stipulating that a certain quantity of domestic inputs (locally produced raw materials, components, etc.) has to be used.

49. Investment protection, by contrast, relates to provisions “designed to guard against political risks faced by companies investing in other countries”, as we were told by Professor David Collins, of City, University of London. As such, investment protection is generally focused on the “post-establishment” phase, i.e. once an investor is already present in a host state. Investment protection provisions have been, and continue to be, hugely controversial, as we discuss below.

50. The formulation of policy in respect of investment in the UK’s post-Brexit multilateral, plurilateral and bilateral agreements falls within DIT’s Core Objective 3, to “Open markets, building a trade framework with new and existing partners which is free and fair”. This comes under the portfolio of the Minister of State for Trade Policy, George Hollingbery; and the lead officials at DIT for this area of work are Crawford Falconer (Second Permanent Secretary and Chief Trade Negotiation Adviser) and John Alty (Director General, Trade Policy Group).

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82 Q108; Dr Jonathan Bonnitcha (UIP0001), Dr Lauge Poulsen (UIP0002), Investment Association (UIP0005), War on Want (UIP0013), Institute of Directors (UIP0015), Dr Robert Basedow (UIP0020)
83 Q108; see also Dr Jonathan Bonnitcha (UIP0001).
84 Q108; Dr Jonathan Bonnitcha (UIP0001)
85 Q133
86 Dr Robert Basedow (UIP0020)
87 Department for International Trade, Single Departmental Plan, 27 June 2019
Multilateral and plurilateral agreements

51. There are a range of multilateral trade and investment agreements, and such agreements are negotiated within the framework of the World Trade Organization (WTO) or, sometimes, another international body, such as the OECD. The term “plurilateral agreements” usually refers to those which involve only a subset of WTO members. The UK is already (before Brexit) in its own right both a full member of the WTO and a party to a number of WTO agreements—among which are those that regulate investment.

52. Within the WTO framework, the Agreement on Trade-Related Investment Measures (TRIMs) and the General Agreement on Trade in Services (GATS) together set a basic framework regarding investment liberalisation. Dr Stephen Woolcock, of the London School of Economics (LSE), told us that TRIMS “bans six core performance requirements”. GATS, meanwhile, covers investment in relation to one of the modes of services supply defined by the Agreement, Mode 3 (supply “through commercial presence in the territory of any other Member”), on a basis that Dr Woolcock described to us as “fairly limited”. Also relevant to investment in respect of Mode 3 services provision is the proposed Trade in Services Agreement (TiSA), plurilateral negotiations on which are currently taking place among WTO members. We will consider these negotiations in greater depth in our forthcoming report on Trade in Services.

53. There have also been other attempts to expand the coverage of investment issues at the multilateral level. In 1995, a group of developed countries launched negotiations on a Multilateral Agreement on Investment under the auspices of the OECD, which was intended to expand the scope of investment liberalisation and to cover investment protection. These failed, according to Dr Woolcock, due to “differences between the Americans and the Europeans”, as well as opposition from civil society groups. There were also attempts to expand the scope of provisions on investment during the Doha Round of negotiations among WTO members, which began in 2001. However, following disagreements between developed and developing countries, investment was dropped from these negotiations.

54. The only existing multilateral agreement including investment protection provisions to have been mentioned to us in evidence is the European Energy Charter Treaty (whose application is, as its title indicates, narrowly focused on the energy sector in Europe). The EU is a signatory to this treaty, as are several Member States in their own rights—including the UK. Negotiations on modernisation of the treaty are expected to begin in autumn 2019, i.e. around the time Brexit is due to take place, but the UK Government is yet to set out its objectives for these negotiations as a contracting party in its own right.

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90 Dr Robert Basedow (UIP0020); European External Action Service, Treaties Office Database, Summary of Treaty: Official Title Agreement on Trade-Related Investment Measures
91 Q109
92 World Trade Organization, General Agreement on Trade in Services, 1995, Article I
93 Q109; see also Dr Robert Basedow (UIP0020).
94 Dr Robert Basedow (UIP0020)
95 Q110; Dr Robert Basedow (UIP0020)
96 Q110
97 Dr Jonathan Bonnitcha (UIP0001), Dr Lauge Poulsen (UIP0002), Professor Jason Yackee (UIP0003), Trade Justice Movement (UIP0004), Advertising Association (UIP0008), Dr Zoe Phillips Williams (UIP0016), Dr Robert Basedow (UIP0020); International Energy Charter, “The Energy Charter Treaty”, February 2019
98 European Scrutiny Committee, Sixty-eighth Report of Session 2017–19, HC 301-Ixvi, June 2019, paras 4.1–4.9
We did ask the Minister for Investment about the UK’s investment liberalisation policy at the multilateral and plurilateral levels after Brexit. However, he referred only to the UK’s continued membership of the UN and “independent” membership of the WTO.\footnote{Q263}

International Investment Agreements

Investment liberalisation and protection are also addressed at the bilateral level, through IIAs, which can, according to UNCTAD, take the form of:

- Bilateral Investment Treaties (BITs)—defined as “agreements between two countries for the reciprocal encouragement, promotion and protection of investments in each other’s territories by companies based in either country”; or

- Treaties with Investment Provisions (TIPs)—including “broad economic treaties that include obligations commonly found in BITs”, such as Free Trade Agreements (FTAs); agreements with more limited “investment-related provisions”; and those that merely set out a “framework” for cooperation or further negotiation.\footnote{United Nations Conference on Trade and Development, Investment Policy Hub: International Investment Agreements Navigator – Terminology}

UNCTAD states that, as at July 2019, a total of 2,353 BITs and 313 TIPs were in force.\footnote{United Nations Conference on Trade and Development, Investment Policy Hub: International Investment Agreements Navigator}

Investment liberalisation in IIAs

In our evidence-taking, we were keen to hear about the level of investment liberalisation that has been facilitated through IIAs. Dr Robert Basedow, of the LSE, was sceptical in this regard; he described investment liberalisation provisions as “tend[ing] to lock in a minimum level of openness. They do not normally reflect the real degree of openness of economies” and were best seen as “insurance policies”.\footnote{Qq116–117; see also Dr Jonathan Bonnitcha (UIP0001)}

We also took evidence on whether investment liberalisation provisions are desirable in IIAs. Dr Jonathan Bonnitcha, of the University of New South Wales, emphasised to us the need for more evidence to enable assessment on a case-by-case basis of whether this is the case. He stressed that there may be instances where “formal government restrictions are less of an obstacle”; and there may also be occasions where such restrictions can be eliminated unilaterally. Although an investment agreement could help in the latter process, this was not a “general rationale” for including investment liberalisation provisions in such agreements “as standard practice”. He also emphasised that including such provisions in UK IIAs might prevent future UK governments from “pursuing their preferred regulatory policies”. He concluded by arguing that “Absent some compelling justification particular to the partner state(s) in question, the UK should not offer, nor seek to secure, commitments to liberalise certain sectors in bilateral negotiations.”\footnote{Dr Jonathan Bonnitcha (UIP0001)}
**Investment protection in IIAs**

59. When it came to investment protection provisions in IIAs, we were told that they rely in part on the non-discrimination standards of MFN and national treatment. They also go beyond these, encompassing other far-reaching standards of protection. We heard in evidence that prominent among these are Fair and Equitable Treatment clauses, which require governments to treat investors “fairly” and respect their “legitimate expectations”. There are also direct and indirect expropriation clauses, in the latter case providing for compensation where a regulatory measure harms, affects or interferes with an investment. So-called “umbrella clauses” oblige host states to comply not just with explicit treaty obligations, but also others, such as those contained in contracts with the investor (arguably in effect elevating contract commitments to the status of treaty obligations). Capital control (or transfer of funds) clauses require governments to allow effectively unrestricted movement of payments and capital by investors. There are also full protection and security clauses, which oblige the host state to take active measures to protect investments against adverse effects from causes such as civil unrest and violence.

60. While BITs have been the main vehicle for investment protection provisions, such provisions have also been incorporated into FTAs (notably some of those negotiated by the EU, as we discuss further below).

**Investor-State Dispute Settlement—the focus of controversy**

61. A key element of investment protection under IIAs is the right granted to investors to raise disputes on their own behalf against host states in cases of alleged violation of protection provisions such as those listed above. These provisions have proved very controversial—most notably in the context of the discussions around the proposed EU-USA Transatlantic Trade and Investment Partnership (TTIP). It is notable that much of our written evidence focused on the extent to which such provisions are appropriate and / or desirable. In consequence, we give this issue full consideration below.

62. Investor-State Dispute Settlement (ISDS) provisions stand in contrast to State-State Dispute Settlement provisions under international agreements (including IIAs)—whereby private investors or corporate bodies have no direct means of seeking redress and must rely on this being done on their behalf by the state to which they belong. We were told that ISDS is premised on the model of commercial arbitration and that substantial amounts have been claimed and awarded by ISDS tribunals. The investment protection regime also features treaties that cover the enforcement of arbitral awards, such as the New York Convention.

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104 Q133
105 Q133; Dr Barnali Choudhury (UIP0019); Global Justice Now (UIP0007); War on Want (UIP0013)
106 Qq133, 150–151; Dr Barnali Choudhury (UIP0019); War on Want (UIP0013)
107 Q136; War on Want (UIP0013)
108 Trade Justice Movement (UIP0004)
109 Q133
110 Dr Julia Calvert (UIP0010)
111 Q166; Dr Michael Waibel (UIP0011); Trade Justice Movement (UIP0004); War on Want (UIP0013); Dr Lauge Poulsen (UIP0002)
112 Dr Julia Calvert (UIP0010)
63. BITs have typically been signed between traditional “home countries” for investors (capital-exporting developed states) and “host” states (capital-importing developing states). Dr Lauge Poulsen stated in written evidence that “the number of investment treaty claims pursued and won by UK investors pales in comparison to the thousands of British investors with assets abroad”, indicating that these provisions are “almost solely used as a last resort”. He argued that the amount of compensation paid to UK investors under UK investment treaties reflected “the broader pattern of investment treaty arbitration as a mechanism primarily serving to resolve large, or very large, disputes”.  

64. Dr Zoe Phillips Williams, of the LSE, explained that, while OECD countries have, as investor “home states”, “been subject to fewer investment claims than developing and transition economies”, it is not true that “investment arbitration is only used by investors in jurisdictions with weak rule of law and unreliable domestic courts”. The UK has, though, so far only been the respondent in two investment claims. One case was brought against the UK (and France) by the Channel Tunnel Group Ltd and France Manche SA, over the level of security around the Channel Tunnel; the parties reportedly settled the case for a substantial sum. The other case involved an Indian investor bringing a case over a commercial lease under the UK-India BIT; it is reported that “Little is known about this claim, including its outcome”. The Government has repeatedly stated that there has never been a successful ISDS case against the UK.

65. We briefly examined ISDS in our report on the Continuing application of EU trade agreements after Brexit (March 2018), urging the Government to “fully consider and explain the implications” of including such provisions in post-Brexit UK agreements that replicate relevant EU agreements. We again looked at ISDS in our report on UK-US trade relations (May 2018), concluding that, before any future negotiations on a UK-US trade agreement, the UK Government must first “clarify its policy on ISDS” and “identify the purpose of an ISDS mechanism in circumstances where both the US and UK have sophisticated, independent domestic judicial systems.” In our report on Trade and the Commonwealth: developing countries (November 2018), we further considered criticisms that ISDS negatively impacts development and human rights, stating that we would return to these issues in the course of the present inquiry. In March 2019, the parliamentary

113 Qq110, 158; Dr Zoe Phillips Williams (UIP0016); Dr Julia Calvert (UIP0010). There are a few BITs between OECD members, as well as a number between Central and Eastern European countries, and between West European and North American states.
114 Dr Lauge Poulsen (UIP0002)
115 Dr Zoe Phillips Williams (UIP0016); see also Dr Lauge Poulsen (UIP0002).
116 Dr Lauge Poulsen (UIP0002)
117 Traidcraft (UIP0005)
120 International Trade Committee, First Report of Session 2017–19, Continuing application of EU trade agreements after Brexit, HC 520, March 2018, para 81
Joint Committee on Human Rights found “clear human rights and rule of law concerns” around arbitration in ISDS and argued that “Investor rights should not be privileged over human rights.”

66. Several UK civil society groups (including trade unions, charities, and other non-governmental organisations) expressed to us their opposition to ISDS, in both EU and UK IIAs. This echoed their and other groups’ opposition to the inclusion of ISDS in TTIP and (in a revised form) the EU-Canada Comprehensive Economic and Trade Agreement (CETA). As a result, investment protection proved to be one of the most politically controversial elements of both agreements. A central point of criticism from these groups, as summarised by the Trades Union Congress (TUC), is that ISDS “enable[s] foreign investors to challenge legitimate legislation that promotes public welfare”. Others also told us that it impinges on governments’ “right to regulate”.

67. On the other side of the argument, the IoD told us that ISDS “is the only way to guarantee non-discriminatory treatment as an investor”. The Institute thought that “There is an unfortunate tendency to politicise certain issues relating to ISDS, but investors need protection.” Likewise, Jack Knight, Deputy CEO of the Investment Association, stated that his organisation “would seek to enable savers and investors to have […] the panoply of measures for investor protection”.

Arbitration tribunals

68. A number of specific alleged shortcomings of arbitration tribunals were mentioned to us in evidence by critics of ISDS. We were told that the high cost of arbitration proceedings limits smaller investors’ access. There were said to be only limited opportunities for participation by citizens or other non-parties to a dispute. It was stated that there was a lack of transparency in proceedings. It was claimed that there was a lack of consistency in arbitrators’ rulings and that they had too much discretion in interpreting broad standards of investment protection such as Fair and Equitable Treatment. There were also alleged to be conflicts of interest on the part of arbitrators, since they have traditionally also been free to serve as counsels in other arbitration disputes. In addition, it was noted that there

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123 Joint Committee on Human Rights, Seventeenth Report of Session 2017–19, Human Rights Protections in International Agreements, HC 1833, para 29
124 War on Want (UIP0007); Trades Union Congress (UIP0009); Global Justice Now (UIP0007); Trade Justice Movement (UIP0004); see also Traidcraft (UIP0006) – Traidcraft is a commercial organisation, rather than a civil-society body, but it is run as a form of social enterprise.
125 Dr Lauge Poulsen (UIP0002); Institute of Directors (UIP0015)
126 Trades Union Congress (UIP0009)
127 War on Want (UIP00013); Global Justice Now (UIP0007)
128 War on Want (UIP00013)
129 Dr Julia Calvert (UIP00010); Dr Barnali Choudhury (UIP00019); Dr Zoe Phillips Williams (UIP00016)
130 Institute of Directors (UIP0015)
131 Q200
132 Q161; Dr Michael Waibel (UIP00011)
133 Dr Julia Calvert (UIP00010)
134 Q164; Dr Robert Basedow (UIP00020)
135 Q143; Dr Julia Calvert (UIP00010)
136 Traidcraft (UIP0006)
was no requirement for aggrieved parties to exhaust domestic remedies (i.e. to have tried as far as possible to seek redress under local laws before having recourse to an arbitration tribunal). This, it was said, led to a “parallel justice system” for foreign investors.¹³⁷

69. Pia Eberhardt, of Corporate Europe Observatory, told us that “Under today’s regime [the arbitrators] are hand-picked by the parties, which it is a bit like you going to your courts and 50% of the judges being your friends or neighbours.”¹³⁸ Dr Michael Waibel, of Cambridge University, argued that, where a “legal system is highly regarded and its courts are independent, domestic courts may be preferable to investor-state arbitration for reasons of cost, transparency and efficiency”.¹³⁹ However, Professor Collins told us that even where there was a developed legal system, such as in the US, foreign investors risked facing inefficiency and arbitrariness in the legal system (including between different levels of government). He said: “Sadly, you can’t expect that all of the courts in the US will be as efficient or as non-arbitrary as we might wish them to be […] I am not sure that I would trust the court of Louisiana or Kentucky or something like that.”¹⁴⁰

70. War on Want noted that 37% of tribunal cases were won by states and 27% by investors. However, these figures were skewed by the large number of cases that were formally won by states but only because they were dismissed on technical grounds of jurisdiction (relating to whether the asset involved actually constitutes an investment under the terms of the relevant BIT). In addition, 23% of cases were settled, “and many of the settlements will have involved the state making concessions”.¹⁴¹ In respect just of those cases actually decided on their merits, investors won 59% of cases, compared to 41% won by states.¹⁴² Professor Collins, however, argued that this ratio was only “slightly in favour of the investors” and it was “not always easy” for them to win once jurisdiction had been established.¹⁴³

**Invoking ISDS provisions**

71. Regarding the extent to which ISDS provisions can be invoked, Ruth Bergan, Coordinator at the Trade Justice Movement, told us that broad definitions of “investment” and “investor” allowed for very wide use of the dispute procedures. She said that in the UK’s model BIT (its previous standard template for such treaties):

> investment covers every kind of asset owned or controlled directly or indirectly, moveable and immoveable property, any other property rights, shares in a company, any other form of participation in a company, intellectual property rights, goodwill, technical processes and know-how.¹⁴⁴

¹³⁷ Q160 [Pia Eberhardt]; see also Traidcraft (UIP0006), War on Want (UIP0013).
¹³⁸ Q164
¹³⁹ Dr Michael Waibel (UIP0011); see also Q166.
¹⁴⁰ Q159
¹⁴¹ A further 11% of cases were discontinued and 2% involved a breach being found but without damages being awarded – UN Conference on Trade and Development, *IIA Issues Note no.3: Special update on Investor-State Dispute Settlement: Facts and Figures*, November 2017, p 4.
¹⁴² War on Want (UIP0013)
¹⁴³ Q147
¹⁴⁴ Q136 (see also Q22); Trade Justice Movement (UIP0004); Dr Lauge Poulsen (UIP0002)
And the UK’s model treaty did “not require businesses to have substantive operations within the UK in order to access the benefits of treaties.” \(^{145}\) Professor Collins, however, emphasised that many types of investment, such as “one-off contracts”, are not covered by ISDS. \(^{146}\)

**Regulatory chill**

72. Another allegation levelled at ISDS provisions is that they lead to “regulatory chill”, i.e. they inhibit or constrain states from introducing public interest regulatory measures for fear that overseas investors will bring arbitration cases in response. \(^{147}\) Dr Julia Calvert, of the University of Edinburgh, stated in written evidence that “Given the costs of international arbitration, [investor] threats can be highly influential”. \(^{148}\)

73. Dr Williams, in conducting an analysis of the distribution of investor claims against OECD states, had found that in addition to extractive industries, claims “are clearly concentrated in what are, or may have formerly been, public services such as waste management, energy and telecommunications services”. These areas, she argues, “can be highly politicized as they very directly impact citizens’ wellbeing, and thus raise clear distributional concerns for policy-makers”. In addition, her analysis suggests that when compared to non-OECD states, OECD states faced significantly more investor claims “triggered by legislative measures alone” (“laws passed by national and sub-national legislation”), as opposed to “administrative” and “judicial measures”. \(^{149}\)

**Provisions on expropriation, and Fair and Equitable Treatment**

74. Dr Barnali Choudhury, of University College London, told us that of the cases she had examined “involving human rights or environmental measures […] approximately two-thirds” featured tribunals finding “a violation of either (or both) of” two key standards of protection: expropriation and Fair and Equitable Treatment. She stressed that the latter “was, however, the more successful basis for a claim”. \(^{150}\) Dr Calvert told us that “It is important to note that these provisions are broadly worded and are open to interpretation by international arbitrators.” \(^{151}\)

75. Ms Eberhardt told us that Fair and Equitable Treatment “has become kind of the catch-all clause that companies use most often and most successfully”. She added that “tribunals have already come to interpret the standard as a legal standstill guarantee for investors. That makes it very difficult for Governments not to pay as they soon as they change the law.” She gave the example of a British investor, Eiser Infrastructure, making a claim against the Spanish Government “because it enacted certain changes to its renewable energy policy”. \(^{152}\)

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\(^{145}\) Q136
\(^{146}\) Q147
\(^{147}\) Q162; Dr Zoe Phillips Williams (UIP0016); Dr Julia Calvert (UIP0010)
\(^{148}\) Dr Julia Calvert (UIP0010)
\(^{149}\) Dr Zoe Phillips Williams (UIP0016)
\(^{150}\) Dr Barnali Choudhury (UIP0019)
\(^{151}\) Dr Julia Calvert (UIP0010)
\(^{152}\) Q143. On this case, see also Dr Lauge Poulsen (UIP0002).
76. Professor Collins, however, stressed that Fair and Equitable Treatment “guards against procedural unfairness in various aspects of administration in the host state” and that “You have to show an egregious treatment by the host state […] it is about the Government substantively interfering with you”. He stressed that it was “not easy to succeed with those claims”.

77. In written evidence, the Global Justice Movement told us that indirect expropriation clauses could apply in situations “where regulatory changes have impacted the business of an investor”, citing cases of companies challenging a “moratorium on fracking” (Lone Pine Resources vs. Canada) and the introduction of a minimum wage (Veolia vs. Egypt). Dr Choudhury, however, noted that while this standard of protection has also been relied upon by tribunals in cases involving “public welfare regulations”, “unlike [Fair and Equitable Treatment], many states have already made concerted efforts to reduce the ambit of indirect expropriation provisions”.

The effect of investment protection on investment flows

78. Ms Eberhardt told us that “one of the most important justifications” for agreements with investment protection provisions was “that they would bring investment”. However, “the evidence to back up this claim is not there or is very inconclusive.” Brazil had never signed an agreement containing ISDS, yet it was “the biggest recipient of foreign direct investment in Latin America”. Factors such as market size and workforce education levels were much more important in determining investment flows. Professor Collins disagreed, saying that some studies “have recently shown that there is an increase in FDI”, such as one “done by the United States International Trade Commission very recently, which shows an increase of about 4% in FDI following the conclusion of bilateral investment treaties”. Studies that were said to show the lack of such a correlation “came out of an era in which world FDI flows were in decline”. However, this did not mean that such agreements “categorically work” in this respect. They worked “more so in some circumstances than in others”. The strongest evidence of their effectiveness was in “transition economies”, although even there they only brought “modest gains”. Ms Eberhardt responded that the inconclusiveness of the evidence had led UNCTAD to say it was “misleading” to suggest that investment protection provisions bring investment.

79. In written evidence, Dr Calvert stressed that research on the relationship between the entry into force of BITs and investment flows showed only “a weak correlation”. Dr Basedow, meanwhile, noted the “inconclusiveness of existing research” on the impact of investment liberalisation and investment protection provisions in agreements. This was down to the difficulty of establishing causation (whether countries conclude agreements to boost investment—or to accommodate a surge in investment that is already occurring) and the unreliable nature of investment data (as we discussed in Chapter 2). Professor Jason Yackee, from the University of Wisconsin Law School, told us that those who argue ISDS encourages investment often do so on the basis of vested interests, as they make
“small fortunes” litigating and arbitrating in ISDS cases. His own research showed “it is very difficult—even impossible—to conclude empirically” that ISDS “encourage[s] greater investment”. He termed “exceptionally weak” (empirically and theoretically) and “essentially nonsensical” the argument that ISDS provisions would encourage greater investment into a country such as the UK, whose legal system was “among the world’s most fair and effective”.

It is notable that a UK Government study concluded in 2014 it was “unlikely that BITs have been a major driver of the surge in outward FDI that has been seen over recent decades”, although they were factors in investment decisions by “a small but not insignificant proportion of investors”.

**The importance to businesses of investment protection**

80. Our evidence did indicate that investment protection provisions may not actually be of great importance to UK businesses investing abroad. The IoD stated that a recent survey of its members had found that “only 3% of business leaders believe investment protection measures […] are an important priority for the UK in developing its post-Brexit trade policy strategy”. It thought that this was likely to be linked to “a lack of familiarity” with such provisions, “particularly amongst [small and medium-sized enterprises]”.

81. While defending the merits of ISDS in principle, the IoD was also mindful of the potential for controversial ISDS provisions to “hold up more important and relevant contents of trade agreements to most businesses”. Accordingly, the Institute “would urge the Government to consider whether it should approach the inclusion of investment protection measures—or at least ISDS specifically—on a case-by-case basis with its future external commercial policy negotiations.”

82. Jonathan Geldart, Chair of the Northeast Region for the IoD, meanwhile told us in oral evidence that he did not view IIAs as having “made a huge amount of difference”—a view with which Stephen Adams, of the political risk consultancy Global Counsel, agreed. In Tokyo, we found that, while Japanese firms were in favour of better investment protection terms in agreements if they could be obtained, they did not seem very focused on the details.

**The evolution of EU policy on investment protection**

83. Following the controversy over ISDS in the TTIP negotiations, the European Commission developed a new approach to investment protection, which Dr Basedow told us was in line with a “global trend and similar US and Canadian reform efforts”. He explained that this approach “limited the scope of protection, refined the definition of the important ‘fair and equitable treatment’ standard and added language on the right to regulate”. It also involves a new Investment Court System (ICS), which involves a
“standing court-like adjudication platform with tenured and vetted adjudicators and mechanisms to review contested decisions”.169 This arrangement has been included in CETA, as well as several other EU agreements.170

84. The UK Government opposed the inclusion of the investment protection provisions in the provisional application (pending ratification) of CETA, due to its reservations about the ICS. Dr Fox indicated to the European Scrutiny Committee (ESC) in 2016 that this was because the ICS meant “a narrowed scope for investors to bring ISDS [cases]”, in various respects, and removed “the rights of the EU Governments and investors to appoint arbitrators.”171

85. However, some witnesses questioned whether the ICS really did represent a break with the fundamental characteristics of ISDS as hitherto constituted. According to Ms Eberhardt, the ICS “was a relabelling exercise, but the investment court system also includes some important changes from the old ISDS”, notably by making proceedings “transparent and open to the public”. She also described how in future the three “arbitrators” deciding on cases would be picked from a “state-appointed” list. While describing these as “important reforms”, she stressed that “the egregious cases that we have been seeing and the threat of regulatory chill really will not be addressed that much by these changes.”172

86. Professor Collins likewise described the ICS model as involving essentially “procedural change” only.173 He further argued that the ICS would render the process of investment arbitration “longer and more expensive” due to its appellate mechanism.174 Luisa Santos, from BusinessEurope (the Confederation of European Business), in giving evidence to us on EU trade policy, noted that her organisation had initially been sceptical as to whether the new provisions on direct expropriation, as well as those on Fair and Equitable Treatment, offered enough protections to investors.175

87. We also heard that the Commission has in addition recently started work on establishing a Multilateral Investment Court. This would serve as a permanent body that can replace the bilateral mechanisms under the ICS.176 The proposal is being pursued through a working group of the UN Commission on International Trade Law that has been charged with looking into reform of ISDS.177

169 Dr Robert Basedow (UIP0020)
171 Oral evidence taken before the European Scrutiny Committee on 26 October 2016, HC (2016–17) 792, Q16
172 Q164; see also War on Want (UIP0013).
173 Q167
174 Q167
175 Oral evidence taken on 22 May 2019, HC (2017–19) 2202, Q34
176 Qq 124, 164; Dr Lauge Poulsen (UIP0002); Traidcraft (UIP0006); Dr Julia Calvert (UIP0010); European Commission, “A future multilateral investment court”, 13 December 2016
177 George Hollingbery MP to Sir William Cash MP, 31 May 2019; Dr Lauge Poulsen (UIP0002)
Alternative approaches

88. As we have noted, it was put to us that investors ought to rely on local courts for redress and could be required in IIAs to explore fully all such avenues before being able to bring a case before a supra-national tribunal.178 Such “domestic exhaustion requirements” were described to us by War on Want as “a customary principle of international law.”179

89. We also heard about the possibility of provisions in IIAs to counterbalance investor rights. Dr Choudhury told us that these included “investor obligations”, whereby investors must acknowledge duties in respect of matters such as corporate governance standards, and the environmental and social impact of their actions.180 Ms Eberhardt told us that, while there was a “debate” about investor obligation provisions, which she welcomed, these were currently included in very few treaties.181 Professor Collins, in contrast, emphasised that the whole purpose of investment protection was to “rebalance” the risks borne by foreign investors.182

90. Another type of counterbalancing measure mentioned by Dr Choudhury was the facilitation of state “counterclaims” (by states against investors), in which non-economic issues might be considered by tribunals in investment disputes. She explained that most arbitral rules allowed for these, although some tribunals had “struggled to determine whether counterclaims are within their jurisdictions”.183 Such provisions were seen as positive by Ms Eberhardt and potentially “interesting” by Professor Collins.184

91. Dr Choudhury also referred to “general exceptions”—including “carve-outs”, where certain sectors or parties are not covered by the provisions on investment protection in an agreement. A prominent example was the tobacco industry carve-out in the proposed Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), “which enables state parties to deny investors the ability to bring an investment arbitration challenging a tobacco control measure”.185 Such provisions were, though, criticised by Ms Eberhardt, who suggested they failed to address what she saw as the fundamental shortcomings of investment protection. Professor Collins, however, saw them as evidence that, rather than there being “an inflexible regime” with “cookie cutter” agreements that were all the same, agreements now “are very fluid and very dynamic; they are bespoke” and can be “tailored to suit the particular country, as it needs”.186

92. Another alternative approach to investment protection within the framework of an IIA is represented by Brazil’s model Cooperation and Facilitation Investment Agreement. Unlike many BITs, this contains no provisions for ISDS; instead, it seeks to avoid disputes arising in the first place, by means of cooperation, mediation and risk mitigation. This is accomplished partly by means of “ombudsman” arrangements, to help foreign investors navigate domestic institutions and prevent disputes from escalating; South Korea also takes a similar approach in this regard.187

178 Qq160 [Pia Eberhardt], 166; Traidcraft (UIP0006), Dr Michael Waibel (UIP0011), War on Want (UIP0013)
179 War on Want (UIP0013)
180 Dr Barnali Choudhury (UIP0019)
181 Q172
182 Q173
183 Dr Barnali Choudhury (UIP0019)
184 Qq172–173
185 Dr Barnali Choudhury (UIP0019)
186 Q174
187 Qq152, 166; Dr Lauge Poulsen (UIP0002); Trade Justice Movement (UIP0004)
93. At the multilateral level, War on Want told us of efforts to establish through the UN a Binding Treaty on Business and Human Rights, “which investment agreements could be required to abide by”.  

94. We were also told about the possibility of alternative forms of investment protection outside the framework of any kind of agreement. One of these was political risk insurance, which, we were told by Ms Bergan, “is available commercially, as well as through the World Bank and from the UK Government” and “covers most of the issues that are covered by investment treaties”. Professor Collins, however, stressed that the “data on political risk insurance is very sketchy” and that such insurance is “very expensive”. While recognising that the cost of insurance was an issue, Dr Poulsen suggested that “there may not always be a strong policy rationale” for the British Government to be concerned about this. He also noted that investors had “a range of corporate risk mitigating strategies available to manage political risk, which can make international legal obligations less relevant in practice”.

95. Dr Geoffrey Gertz, of the Brookings Institution (a US think tank), told us in written evidence about another alternative outside the framework of an IIA. He told us that, instead of formal, agreement-based approaches to dispute settlement (ISDS and State-State Dispute Settlement provisions), “less formalized diplomatic interventions” can be undertaken, whereby “Diplomats can assist UK businesses in resolving incipient investment disputes before they become investor-state arbitration cases”. He emphasised that the UK Government “should do more to measure and evaluate its approach to investment diplomacy, including through surveys of UK businesses.”

**Sustainable development and IIAs**

96. Dr Berger told us that “for most developing countries investment liberalisation commitments may not be a desirable policy option at the moment”. This was because they wanted to retain the ability to regulate incoming FDI; and it would require “very high administrative capacities” to ensure that particular markets were not liberalised before they were ready for international competition or where such liberalisation would run counter to “an active industrial policy”. Likewise, such administrative capacities would be needed in order to ensure “a mutually beneficial relationship between international and domestic companies”. Dr Bonnitcha, meanwhile, argued that “the UK should not seek to compel liberalisation” where it ran counter to a developing country’s wish to impose “certain restrictions or conditions on inbound investment” that would support “the achievement of development outcomes”. As noted above, while we heard differing views regarding whether there was enough evidence to conclude that investment protection provisions promote FDI flows, including into developing countries, the prevailing view was that the evidence was inconclusive.

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188 War on Want (UIP0013)
189 Q166; see also Traidcraft (UIP0006), War on Want (UIP0013).
190 Q170
191 Dr Lauge Poulsen (UIP0002)
192 Dr Geoffrey Gertz (UIP0004)
193 Q111
194 Dr Jonathan Bonnitcha (UIP0001)
195 Qq152, 154–155
97. Several witnesses told us of problems that investment protection could potentially pose for sustainable development. Dr Zhan, of UNCTAD, told us that “almost none of the UK’s bilateral investment treaties mentions sustainable development”.196 The Trade Justice Movement wrote in its evidence submission that “There is already evidence that UK BITs are impacting upon the policy space of governments” in a development context.197 Global Justice Now called for “Reviewing and renegotiating relevant bilateral trade and investment agreements to exclude clauses that are hindering development goals (e.g. ISDS clauses)”.198

98. Of the EU Economic Partnership Agreements, which are specifically intended as development-focused trade agreements,199 only the CARIFORUM (Caribbean Forum) Economic Partnership Agreement contains substantive provisions on investment. These are specifically in relation to investment liberalisation and have been carried forward into the UK’s roll-over trade agreement with CARIFORUM.200

IIAs to which the UK is already a party

99. The UK is already party to many IIAs negotiated independently from its membership of the EU. Dr Bonnitcha told us that “the UK has one of the world’s largest network[s] of bilateral investment treaties, which has been built up since the 1970s” and that “Almost all of these treaties are with non-OECD states”.201 UNCTAD’s IIA database currently shows the UK is a party to 103 BITs, of which 93 are in force.202 It was confirmed to us in evidence that the UK’s BITs are focused on investment protection rather than on investment liberalisation.203

100. The UK is also, as an EU Member State, party to various EU agreements concerning investment. In 2009, the Treaty of Lisbon granted the EU exclusive formal competence to negotiate on issues around FDI. This resulted in the broadening of the scope of EU investment agreements to encompass investment protection. Where trade agreements negotiated prior to 2009 had featured investment provisions, these were only about liberalisation.204 Two particular aspects of foreign investment policy, ISDS and portfolio investment, remain a shared competence between the EU and Member States.205

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196 Q75; see also Trade Justice Movement (UIP0004)
197 Trade Justice Movement (UIP0004)
198 Global Justice Now (UIP0007)
200 Foreign and Commonwealth Office, Economic Partnership Agreement between the CARIFORUM States, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, CP 103 Volume 1, May 2019
201 Dr Jonathan Bonnitcha (UIP0001)
203 Qq75, 136, 143, 145, 151, 158, 172; Dr Jonathan Bonnitcha (UIP0001); Dr Lauge Poulsen (UIP0002)
204 Qq113–115
205 This follows clarification in 2017 (in European Court of Justice Opinion 2/15 concerning the EU-Singapore FTA – War on Want (UIP0013); Dr Robert Basedow (UIP0020); Oral evidence taken on 22 May 2019, HC (2017–19) 2202, Q20; Court of Justice of the European Union, Press Release No. 52/17, 16 May 2017. Any EU agreements that include provisions touching upon such shared competence must be ratified by Member States’ parliaments, as well as the European Parliament.
Want told us that, following the entry into force of the Treaty of Lisbon, the EU had been seeking to replace Member State BITs with EU-level agreements (either trade agreements or standalone investment agreements) “but there at present is still a mix.”

101. It appears that CETA is currently the only EU-level trade agreement to be concluded that features investment protection provisions. Additionally, the EU has concluded two Investment Protection Agreements (IPAs), with Singapore and Vietnam, and is currently negotiating another such agreement with Japan, as well as standalone investment agreements with China and Myanmar.

102. As we noted in our report on Continuing application of EU trade agreements after Brexit (March 2018), once Brexit takes effect the UK will no longer be covered by either the trade or investment provisions in EU agreements—unless they can be rolled over (i.e. replicated in the form of new UK-third country agreements).

103. Evidence from several sources indicated that the BITs to which the UK is a party in its own right will continue to apply after Brexit. This includes both extra-EU BITs and the intra-EU BITs that were concluded with 12 states in central and eastern Europe which have since become EU Member States. The status of intra-EU BITs is in some doubt, following moves by the Commission to have EU member states terminate these treaties and a ruling by the European Court of Justice in 2018 that the investor-state arbitration provisions in the BITs are contrary to EU law, on the basis that such treaties interfered with the autonomy of that law. In January 2019, all Member States (including the UK) made a commitment to terminate intra-EU BITs in their entirety.

Government policy in respect of the UK’s post-Brexit IIAs

104. In its May 2018 response to our report on the Continuing application of EU trade agreements after Brexit, the Government stated that it was “considering a wide range of options in the design of future bilateral investment agreements, including dispute settlement mechanisms.” In its response in September 2018 to our report on UK-US trade relations, it emphasised that for “future negotiations” it would “consider the appropriate design of investment provisions together with the fuller range of other trade and investment issues”. It would “seek to ensure provisions take account of international best practice and reaffirm
the right of the government to regulate in the public interest.” At the same time, it noted that “ISDS tribunals cannot overrule the sovereignty of Parliament, overturn or force any changes to law.”

105. In February 2019, in response to a Parliamentary Question on ISDS in post-Brexit trade agreements, the Government referred to the fact that it was still considering its response to four online public consultations on potential future FTAs. (On 18 July 2019, the Government published a summary of the responses it had received to these consultations.)

106. Writing to the Chair of the ESC in February 2019 about possible post-Brexit investment protection provisions in relation to Vietnam, in light of the EU’s proposed IPA with that country, the Minister for Trade Policy, Mr Hollingbery, emphasised that “the ICS is just one model” for such provisions. The Government supported “ensuring fair outcomes of claims, high ethical standards for arbitrators and increased transparency of investor-state dispute settlement hearings” and thought these objectives could be “achieved in many different ways”. Regarding the EU’s proposal for a Multilateral Investment Court, the Government would “examine the detail carefully, as it develops” to see whether the proposal improved on existing procedures and achieved the Government’s objectives in a better way than alternative proposals. In subsequent correspondence, in May 2019, the Minister said the Government was still considering “a wide range of options”, including “modern innovations in policy approaches and in the design of specific treaty provisions”. In due course, it would “also consider whether to negotiate new investment agreements or renegotiate any of its existing 90 [Bilateral Investment] Treaties.” The ESC subsequently noted that the Government was “still unable or unwilling to share its position” on the ICS.

107. When Dr Fox gave evidence to us in March 2019, we asked him about the possible inclusion of ISDS in future UK trade agreements. He responded that the UK was “one of the world’s top users of the investor state dispute resolution mechanisms”. While not a single case had been successful against the UK, British investors overseas benefited from the protection afforded by ISDS. He acknowledged that, in relation to countries with “similar or very similar legal systems” to that of the UK, the case for ISDS provisions was perhaps “less strong”; but “the key determinant” was whether UK investors would have the protection they needed and the confidence to be able to invest. This was important because of the income generated for the UK, which benefited “things like pension funds”. When asked again about ISDS in July 2019, Dr Fox reiterated that the Government would “come back to this issue.”

108. When we asked Mr Alty about the roll-over of EU FTAs with an “investment chapter”, he referred to CETA (which contains investment liberalisation and investment

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215 Written Answer 223240, 25 February 2019; see also Written Answer 231462, 15 March 2019.
216 Department for International Trade, “Summaries of consultations on future FTAs published”, 18 July 2019
220 European Scrutiny Committee, Sixty-eighth Report of Session 2017–19, HC 301-Ixvi, June 2019, para 3.16
221 Oral evidence taken on 6 March 2019, HC (2017–19) 436, Q822
222 Oral evidence taken on 3 July 2019, HC (2017–19) 436, Q963
protection provisions) and FTAs with Singapore and Vietnam (which contain investment liberalisation provisions). Since none of the investment provisions concerned had yet been applied, they were not a matter for roll-over; such provisions would, though, be considered in negotiating any future UK agreements with these countries. 223

109. When we questioned the Minister for Investment about post-Brexit UK policy on BITs, he stressed the UK’s duty of sincere cooperation with the EU while it was still a member. The Government was “looking at the policy” and would “be happy to share [its] thinking and indeed look for input, most importantly from this Committee […] when we get out of the European Union”. 224 It is notable that this is the first time the Government has told us that the duty of sincere cooperation precludes the UK from beginning to formulate its post-Brexit trade and investment policy while still a Member State. We have hitherto been led to believe that the duty of sincere cooperation only prevents the UK from negotiating or signing new FTAs before Brexit. It does not preclude, as Dr Fox put it to us, “limited conversations about potential scoping” with prospective FTA partners; 225 and several UK Trade Working Groups are apparently engaged in such conversations. 226

110. It is also noteworthy that the Investment Minister appeared to cast doubt on the importance of IIAs. He told us: “investment treaties are not a top priority for business— in fact, I don’t think a single business has ever raised that with me, which suggests that it is not that material.” 227 This does sit interestingly alongside evidence (which we have noted above) that businesses do not seem greatly preoccupied with investment protection provisions; as well as the less than compelling evidence for a correlation between the signing of IIAs and increased investment flows.

**Investment liberalisation outside agreements**

111. As we have noted, Dr Bonnitcha explained to us that investment liberalisation can occur outside the framework of IIAs, on a unilateral basis. 228 The Minister for Investment told us that the Department was “tilting towards market access right around the world”— meaning that it was pursuing just such unilateral investment liberalisation. It was working on identifying and targeting “barriers to doing business” that could be tackled outside the context of an agreement. He remarked that the Department’s Chief Trade Negotiation Adviser, Crawford Falconer, “likes to say [that] for every one person you have working on free trade agreements, you need three […] working on market access.” 229 One example he cited was the elimination of a restriction on the establishment of English schools in Morocco, a barrier identified via the Market Access Digital Service “now set up” by the Government. 230 He also stressed that “There are market access barriers all over the world, and when you just make that minor tweak in regulation, you can have tens or
even hundreds of millions of pounds of business as a result.\textsuperscript{231} The Secretary of State, when asked about Departmental resourcing of FTA negotiations, also emphasised the importance of market access in DIT’s work.\textsuperscript{232}

**Conclusions and recommendations**

112. While we appreciate that International Investment Agreements fall within the portfolio of the Trade Policy Minister, we were disappointed by the limited amount that the Investment Minister said to us on this topic. Although we did take evidence from the senior official responsible for International Investment Agreements, the Director General for Trade Policy, he too was only able to provide us with limited information. Regarding the Government’s plans on post-Brexit UK International Investment Agreements neither the Minister nor the Director General for Trade Policy was able to set out even basic lines of policy. The Minister argued that the duty of sincere cooperation, which the UK is currently under as an EU Member State, prevents the Government from formulating such a policy until after Brexit. However, we find it hard to discern any credible legal basis for this claim. Furthermore, we note that the Government is already taking steps to develop a post-Brexit trade policy, through its consultation on a number of prospective trade agreements; and that Trade Working Groups are conducting scoping talks with several prospective trade agreement partners. The Government needs to have a policy in place for the eventuality of a Brexit scenario in which there is no transition period—which could occur on 31 October 2019. We are alarmed that no such policy seems yet to have been formulated.

113. In formulating its policy on International Investment Agreements, the UK cannot just go back to the approach it used before 2009 (when negotiating such treaties became a formal EU competence), given how hugely controversial international investment policy has since become and how significantly the policy environment has, in consequence, changed. We recommend that the Government should clarify where it stands on investment protection standards and dispute resolution mechanisms for investors. It must carefully consider and fully evaluate specific alternatives to conventional Investor-State Dispute Settlement provisions—including the EU’s Investment Court System and its proposal for a Multilateral Investment Court. The Government should also consider the compatibility of investment liberalisation and investment protection provisions in International Investment Agreements with UK policies in the areas of development, climate and human rights.

114. Another area the Government must consider is that of potentially including provisions in International Investment Agreements to counterbalance investor rights, such as enshrining investor obligations, allowing for state counterclaims or “carve-outs” from investment protection. If the Government chooses not to adopt any such provisions, it must explain the reasoning behind that decision.

115. As well as failing to develop a policy in respect of International Investment Agreements, the Government has little to say in respect of its policy at the multilateral and plurilateral levels in relation to investment liberalisation and investment protection. We recommend that the Government set out, in its response to this Report, what approaches it plans to take at these levels.

\textsuperscript{231} Q288
\textsuperscript{232} Oral evidence taken on 3 July 2019, HC (2017–19) 436, Q932
4 Investment promotion and investment facilitation

116. Among the key functions of government in respect of overseas investment are those of investment promotion and investment facilitation, both of which are typically discharged through dedicated Investment Promotion Agencies. Dr Zhan, of UNCTAD, told us that DIT was “now playing a key role” in this regard and that the UK Government and its partner organisations “still rank among the top in terms of investment promotion and facilitation”. Dr Zhan explained to us that investment promotion involves marketing a particular location or industry in a host country in order to attract inward investment, with “promotion agencies trying to get investors in on the ground”; this can include offering material incentives to inward investors. He further explained that investment facilitation, by contrast, entails “a set of measures to make it easier for investors to do business”. Such measures included “trying to ensure the transparency and availability of the information for investment in host countries”, as well as “efficient procedures in business registration and also reducing the costs of registration or doing business in the country.”

117. A series of UK Government bodies (along with partners at the devolved, regional and local levels) have discharged these functions, as well as undertaking parallel functions in respect of outward investment. Before the machinery of government changes that took place in July 2016, the Government body responsible for investment promotion and investment facilitation was UKTI, which was constituted as a non-ministerial department. When we visited South Korea in October 2018, we heard that Invest KOREA (the body for carrying out inward investment promotion work on behalf of South Korea) had been modelled on, amongst others, UKTI.

118. On the creation of DIT in July 2016, UKTI was merged into the new Department, and its functions were taken on by DIT’s International Trade and Investment (Group) — which has now become Global Trade and Investment. However, as the Secretary of State confirmed to us in July 2019, DIT has still not published an overarching strategy in respect of investment promotion and investment facilitation (along the lines, for instance,

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233 Q67
234 Antonia Romeo to Meg Hillier MP, 13 November 2018. See also Department for International Trade, Inward Investment Results 2015/16, September 2016, p 6: “DIT is recognised as one of the best investment promotion agencies in the world.”
235 Q63
236 Q64
237 Q65
238 Q66
239 National Audit Office, A Short Guide to the Department for International Trade, October 2017
241 Oral evidence taken on 3 July 2019, HC (2017–19) 436, Q962
of the Export Strategy, published in August 2018, in relation to promoting exports). Information on aspects of its approach to investment promotion and investment facilitation must, therefore, be gleaned from a range of official sources.

120. The Investment Minister told us that there was “ferocious competition” in investment promotion. France was now making more effort in this field and had achieved an “uplift” in its performance; and Spain and Ireland were also doing well. During our visit to Seoul we heard about the concerted efforts that France and Germany make in this regard. In Tokyo we were told that, while the UK is still the primary investment destination in Europe for Japanese investors, there was now increased interest in Germany, Spain, Italy and France.

**Investment and the Industrial Strategy**

121. DIT’s role in respect of investment promotion and facilitation sits within the overall framework of the Government’s Industrial Strategy, which was published in November 2017. The Strategy’s stated aim is to “boost productivity by backing businesses to create good jobs and increase the earning power of people throughout the UK with investment in skills, industries and infrastructure.” The strategy is led by the Department for Business, Energy & Industrial Strategy (BEIS), one of whose objectives is “Encouraging inward investment”. DIT, meanwhile, states that its approach to “reinforcing the UK as a leading global destination for investment” is aligned with “government priorities (such as regeneration, infrastructure and energy development projects)” and “Industrial Strategy sectors such as artificial intelligence and virtual reality technology.”

**DIT’s Core Objectives**

122. A number of DIT’s Core Objectives relate to investment promotion and investment facilitation. Core Objective 1 (for which the Secretary of State and the Investment Minister are jointly responsible) is to “Support UK businesses to grow internationally in a sustainable way”. The Department states that, in order to achieve this, it will “Drive sustainable growth by encouraging and facilitating Outward Direct Investment”.

123. DIT’s Core Objective 2 (for which the Investment Minister is responsible) is to “Ensure the UK remains a leading destination for international investment and maintains its number one position for international investment stock in Europe”. To achieve this, the Department states that it will: engage with prospective investors; promote the UK as an investment destination; help and advise investors; and work across government to ensure a competitive business environment. The lead official in respect of Core Objective 2 is the Director General for Investment. The current postholder, Mr Slaughter (who was appointed in June 2018) is the first person to hold this role.

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242 Department for International Trade and UK Export Finance, *Export Strategy: supporting and connecting businesses to grow on the world stage*, August 2018
243 Q234; see also Q235.
247 Department for International Trade, “Citigroup boss to oversee UK investment drive”, 7 June 2018
124. The Department’s Core Objective 4 (which is the responsibility of the Secretary of State) is to “Use trade and investment to underpin the government’s agenda for a Global Britain and its ambitions for prosperity, stability and security worldwide.”\(^\text{248}\) We heard in evidence from the IoD that the Government’s vision of a “Global Britain” was “still some ways short of being a detailed cross-cutting strategy.” The Institute thought that “The effectiveness of DIT could be more easily measured against a defined, comprehensive Global Britain strategy.”\(^\text{249}\)

### DIT’s services to inward investors

125. The Department states that it provides “significant support services” to inward investors, involving “providing information, guidance and support on the UK business environment, to access finance, talent and skills, visas and migration, research and innovation, and sector experts.” This “end-to-end service for investors”, provided “both in the UK and overseas”, involves “working with colleagues across government, in London, UK regions and Devolved Administrations.”\(^\text{250}\)

126. A key role in delivering these services is played by the Department’s Capital Investment Directorate.\(^\text{251}\) This “helps investors find appropriate projects, smoothing investment journeys with tailored advice, insight and introductions”, promoting “investor-ready schemes selected by our specialist teams”. Acting as “a one stop shop to align investors with a credible project pipeline”,\(^\text{252}\) the Directorate focuses on:

- large-scale property and infrastructure development projects as well as opportunities to invest in high-growth UK businesses, particularly in the technology sectors, where we also offer support to encourage entrepreneurs to move to the UK.\(^\text{253}\)

127. In addition, DIT runs a number of targeted programmes that are focused on inward investment. These include the Strategic Relationship Management Programme, working across Government to meet the needs of the most important inward investors,\(^\text{254}\) which was begun by UKTI. The Programme “provides a single point of contact coordinating government support for firms to engage through”, bringing “best practice in private sector relationship management into the public sector”.\(^\text{255}\) The Minister told us that through this scheme, “108 of the largest investors in the UK are managed and have a Minister allocated to them”.\(^\text{256}\) Another such strand of work that dates back to UKTI is the Global Entrepreneur Programme,\(^\text{257}\) which “helps high potential, Intellectual Property (IP)
rich, overseas entrepreneurs and early stage technology businesses or start-ups looking to relocate and scale their business in the UK. The projects involved form a subset of DIT-supported FDI projects.

128. DIT also provides a number of free online services for investors. In May 2018 it launched a “revamped online one stop shop for potential investors” at invest.great.gov.uk (branded “Invest in GREAT Britain & Northern Ireland”), to “help global investors find UK projects”. In October 2018, the Department launched a new online service, the Perfect Fit Prospectus, at invest.great.gov.uk/perfectfit, which creates “individualised reports for potential investors–based on their country of origin and the sector they operate in–to give them the information they need to make an informed investment decision.” In May 2019, DIT revamped the UK Advisory Network / Investor Support Directory, an online service listing British businesses able to help overseas investors set up or expand operations in the UK, which had also been carried over from UKTI. This became the UK Investment Support Directory at www.great.gov.uk/investment-support-directory.

The Minister told us “We are trying to up our digital content […] great.gov.uk has a lot of resource and we are trying to invest more in that.”

129. Dr Zhan recommended that DIT should in addition set up “an online, one-stop shop for business registration”; as well as a “single [electronic] window for investment information”, a service which would enable investors to submit documentation to several government bodies by means of just one electronic submission.

130. More generally, the IoD told us that DIT “should ensure its services are adequately promoted”, since “the awareness of them amongst firms can be quite low.” The Institute thought there was “a clear role for business organisations to help facilitate greater awareness of Government backed schemes.”

Fostering a competitive UK business environment

131. DIT also seeks to attract inward investment by working to bring about a competitive UK business environment. As the Investment Minister mentioned to us, this is partly done through the Business Environment Advisory Team. This advises investors on...
the UK business environment; trains DIT staff to sell the UK business environment to investors; and uses feedback from investors to inform the development of Government policy in areas such as skills, migration, tax, and research and development.267

132. DIT also plays a cross-departmental role in this regard. When the post of Director General for Investment was advertised, the Department stated that the postholder’s responsibilities would include “co-ordinating government departments and working in partnership with the private sector to attract and retain high quality overseas investment.”268 The Investment Minister told us that the Director General was “leading competitiveness work across Whitehall”,269 working with the Home Office, BEIS and other departments.270 The postholder himself, Mr Slaughter, told us that, as someone who had recently come from outside the public sector, he had found the Government “actually quite remarkably joined up” across departments in this respect.271

Devolved, regional and local approaches

133. As we have noted, the Department’s role also involves working closely with official bodies, and others, in the devolved nations and at the regional and local levels in England.

Devolved nations

134. In respect of the devolved nations, in the 2011 Devolution Memorandum of Understanding, the UK Government and the DAs noted that they had “concurrent powers to promote international trade and inward investment”. The then UKTI had lead UK responsibility for “promoting the UK and all its constituent parts to foreign investors”, and for supporting and assisting outward investors, at home and overseas. The DAs were “responsible for devising and implementing additional programmes to meet the particular needs of companies in Northern Ireland, Scotland and Wales” and for promoting those countries to foreign investors. Various mechanisms were set up to enable consultation and coordination between central Government and the DAs in this respect.272 Within each of the DAs there are arm’s-length Investment Promotion Agencies, namely: Invest Northern Ireland (NI); the Welsh Development Agency; and Scottish Development International.

135. Alan Wilson, Head of International Investment at Invest NI, explained that each DA had its own “economic profile”, based on selected “contestable FDI sectors”. Invest NI focused on “financial services, legal and professional services, life and health sciences, software, ICT, advanced manufacturing, aerospace defence—those types of high-value FDI”. At the same time, though, “we are always foresighting and looking at what the top 10 trends are globally”.273

267 Information from Department for International Trade, 14 June 2019; Department for International Trade, DIT support for the space sector, p 14; Department for International Trade, “Fostering Innovation & the Industrial Strategy”, 18 June 2018
268 Department for International Trade, “DIT announces new roles to lead export and investment agendas”, 1 December 2017
269 Q242
270 Q269
271 Q269. See also Department for International Trade, Annual Report and Accounts 2018–19, HC (2017–19) 2229, pp 13, 18, 34, 35, 57.
272 HM Government, Devolution: Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee, June 2011, para D4.22. See also Antonia Romeo to Meg Hillier MP, 13 November 2018.
273 Q78
136. Mr Wilson told us that each business brought into NI had an “acceptable business plan” mapped out, which was subjected to due diligence and appraisal procedures. Eventually, a contract was signed, lasting between three and five years, with a three-year control period at the end of the contract. Any grants were paid out in arrears, to minimise risk to public funds. Client teams engaged with companies to ensure that preconditions in the contract were met, monitoring them on a regular basis. At the end of a project, a full evaluation was carried out. He stressed that “a company will normally invest initially because they come for the talent that is in a region; they do not come for the incentive that the grants give”. There was typically an employment grant in the first instance and then, “perhaps six months”, there might be support for developing skills in the workforce. Within just two years, an employment grant would yield a “10 to one return on the investment”.274

137. Regarding collaboration with DIT, Mr Wilson said:

we do have a very good relationship with DIT. I have to say that years ago it was not so close, but over the last couple of years we have definitely stepped up engagement on both sides. We have an executive forum where our chief executive meets with the directors general from DIT, and the other devolved Administrations also get together and discuss strategic matters. That is working well.275

Collaboration with DIT occurred overseas as well as in the UK. Mr Wilson told us that Invest NI had 23 offices in countries around the world which worked with prospective inward investors.276 In addition, “We have been encouraged to use the FCO platform in global posts”. Eight additional such resources, co-located with DIT representation in overseas posts, had been added in recent years, “mostly across Asia-Pacific at the moment, but also going global on that model”. Co-location meant engaging with DIT’s sector teams in each country, which had “really helped the relationship” with the Department. Mr Wilson also said that the Scottish and Welsh DAs were taking a similar approach in this regard.277 (The role of DIT staff overseas is further discussed below.)

138. Another area of work with DIT was involving companies in Northern Ireland with DIT’s trade missions. One “slight criticism” Mr Wilson had was that more notice of such visits should be given: “With a bit more notice on the timeline, the sector and what it is about, I think all the DAs would have an opportunity to offer up really good representative companies that could attend those missions”.278 As an example of where “the DAs sometimes miss out”, he mentioned a cybersecurity trade mission to New York of which Invest NI had not been made aware, despite theirs being “the leading cybersecurity region in the UK”.279

139. Mr Wilson also told us that data from DIT’s overseas posts on investment leads did not come in a helpful form, as the DAs had stricter criteria for the type of project that they could support (it needed to be a “net new investment […] That brand must not have existed in Northern Ireland before”).280
140. When we asked Mr Slaughter about the relationship between DIT and the DAs, he told us that there was a “huge level of engagement”, with very strong co-ordination by means of quarterly meetings. He said there was “an excellent relationship now and we will continue to grow it over time.”

141. The Advertising Association suggested to us that “the concept of comparative advantage could be utilised whereby Devolved Administrations take the lead on certain industries or sectors, linked to the Industrial Strategy, to avoid destructive competition.” The Association also argued that the devolution of “control over certain taxation policies may also help to beneficially distort the market and reduce imbalances across the regions.”

**England**

142. In England, investment promotion is approached differently. There were previously nine Regional Development Agencies, but these were abolished in 2012, with the expectation that a similar role would in future be played by Local Enterprise Partnerships (LEPs), involving local authorities and businesses, are expected to produce Growth Plans and multi-year Strategic Economic Plans. LEPs (or Mayoral Combined Authorities, where these exist) lead on Local Industrial Strategies (LISs), which are “developed locally and agreed with Government” and are intended to “build on the innovative approaches in Scotland, Wales and Northern Ireland.”

143. In 2012, UKTI set up a National Investment Services Team to liaise with LEPs and local authorities in England; this service is now provided in partnership with EY and OCO Global. It includes building and maintaining an understanding of local assets; passing investment inquiries on to localities; and working with overseas posts and sector leads.

144. Forty-eight Enterprise Zones exist in England, offering tax breaks and other incentives for businesses that are set up in, or relocate to, those areas. Some overseas investors in England have been able to access Government grants and/or loans through the Regional Growth Fund and there is an Exceptional Regional Growth Fund, used at ministerial discretion.

145. Chris Henning, Corporate Director for Development and Growth at Nottingham City Council, told us that central Government “with their network of embassies and posts overseas” provided an effective “sales front end” for the UK. Local authorities then provided the “last mile” of the process, representing “the actual places that people want to come and invest in, and the people that they need to operate in their business”. He thought it was “absolutely critical” to connect the two functions and recognise “the roles that all players have to play.”

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281 Q296  
282 Advertising Association (UIP0008)  
283 HM Government, Local Industrial Strategies: Policy Prospectus, October 2018  
285 HM Government, “Enterprise Zones – Looking for a place to grow your business?”  
286 Department for Business, Energy & Industrial Strategy, “Regional Growth Fund”  
287 Department for Business, Energy & Industrial Strategy, “Regional Growth Fund”  
288 Q99
In written evidence, the IoD suggested the need for “better join-up […] between Whitehall and regional and local government so that investment can be channelled to key areas and sectoral clusters”. It envisaged a greater role for LEPs and other bodies in the English regions. The Institute also referred to the need for regional roundtables involving businesses. It further urged that “there should be more attention focused on inbound trade missions in particular, in order to better showcase first-hand to potential investors the potential for investment at a regional level”. And it favoured the involvement of “more regional bodies” in UK Government-led trade missions.

The new FDI Strategy and High Potential Opportunities

Since 2017, DIT has published investment portfolios for Scotland, NI, Wales, the Northern Powerhouse, the Midlands Engine and South England, highlighting particular investment opportunities (along with the services to investors provided by the Capital Investment Directorate). This approach has been further developed through the new FDI Strategy, which the Department launched in April 2018.

The FDI strategy, on which the Director General for Investment leads, is based on developing specific investment propositions known as High Potential (or Hi-Po) Opportunities (HPOs). Following the development of three “trailblazer” HPOs, DIT is working with LEPs, the DAs and central Government’s Territorial Offices (the Scotland Office, the Wales Office and the Northern Ireland Office) to identify FDI opportunities that have yet to achieve their full potential. DIT’s “global network of sector and specialist insight” is then be combined with partners’ local knowledge “to build a much more clearly defined and differentiated proposition” to be promoted by DIT staff in overseas posts. In May 2018, there were stated to be 68 HPOs, worth more than £30 billion; and the Department says that the programme will be expanded.

When the Minister appeared before us, he explained that DIT’s role was to:

- identify opportunities around the country that perhaps people do not automatically understand […] and ensure that we market that effectively to foreign investors so that investment goes out to Northern Ireland and elsewhere and is not concentrated just in London and the south-east.
Mr Slaughter further explained that the HPO programme was different from other types of investment targeting, which “is more starting from the investor rather than where we want it to go”.298

The role of the university sector

150. Invest NI talks in terms of fostering “an eco-system that attracts international entrepreneurs to locate in Northern Ireland to establish and grow their business.”299 Mr Wilson explained this with reference to NI’s “fantastic A-level results”, which helped to attract “product development companies with high-value jobs”. The “really high-end skill demands” brought by these companies pushed “interaction with the universities, and the universities then turn and push interaction back into the Government and back into Invest Northern Ireland”.300

151. Mr Henning similarly referred to the way that local “economies can differentiate themselves […] through the health and vibrancy of their economic growth and innovation ecosystems.” These, he explained, were “networks of businesses, universities, business clubs and investors.”301 He further told us about the important role of the University of Nottingham’s successful campus at Ningbo in China. The relationship that had consequently developed between Nottingham and Ningbo over more than a decade was “ground breaking and may even be unique”. The Council had been “invited into that relationship” and had used it “in order to grow not only the academic-to-academic side of things, but the business-to-business and civic-to-civic side of things”, with a “sister-city” relationship developing. An “investment pipeline” from Ningbo had emerged, trade missions had been sent, and the relationship was “resulting in jobs, growth and investment in Nottingham”.302 Mr Henning concluded that the UK has:

a network of universities that are utterly international in their focus and have a set of R&D specialists. While in a sense they are competitive, they are also collaborative in terms of bringing knowledge into the UK. I would mobilise our universities to work together, and central Government can start to do that.303

152. We also heard from Mr Adams, of Global Counsel, that Higher Education was a “magnet for investment”, through “commercial partnerships with universities in pursuit of R&D”, as well as a “a series of ancillary sectors”, including the “pathway sector” (which prepared students for university) and the student housing sector. Universities had a “role in fuelling the skill level of the wider workforce” and in generating “spillover benefits and direct benefits for partnership”.304 Mr Geldart, of the IoD, told us that this effect was not just “concentrated in a few institutions” but was widespread. Universities in the regions had “particular attributes and particular focal points” for which they were known, such as the medical schools at several institutions.305
153. DIT refers to the UK’s world-class universities as a key part of the UK’s attractiveness to investors. The Minister noted that the university sector was linked to the UK being “the No.1 place for the big global tech firms to invest in Europe”.

He told us that the UK had four of the world’s top 10 universities and this was: 

because our universities are the most internationally collaborative in the world. We facilitate and support that and want to see that happen. A lot of future economic benefit will come from innovation and technology, which will come from having universities, business, Government and regulators all working closely together.

The Government wanted to encourage the embedding of business in universities; and developments such as the science park at Cambridge University proved that universities had an “appetite” for this. The Government stood ready to support this and that was why it was putting more funding into research.

**DIT’s operations overseas**

154. Activities undertaken by DIT overseas are crucial to its investment promotion and investment facilitation roles. A high-profile aspect of this is the many overseas visits undertaken by DIT ministers, but the Department does much else besides under the heading of its “Overseas Platform”.

**The GREAT campaign**

155. The GREAT campaign—or the GREAT Britain (& Northern Ireland) campaign—is the government’s major branding initiative to promote the UK as a destination for tourists, trade and investment and students in order to secure economic growth, launched in 2012. The trade and investment aspect was relaunched by DIT in January 2017. According to the Department, GREAT operates in 144 countries and in 2018 it “supported over 1,400 separate events and activities in around 200 locations worldwide.”

The campaign includes the INVEST in Great Britain & Northern Ireland campaign, which “deploys advanced digital marketing strategies to generate interest in the UK’s FDI proposition.” As we have noted, some of DIT’s online services to investors are being delivered under the GREAT brand.
**HM Trade Commissioners**

156. The Secretary of State has appointed a network of nine HM Trade Commissioners (HMTCs),\(^\text{316}\) who “cooperate closely with HM Ambassadors and High Commissioners, the wider diplomatic network, and other HM Government colleagues based in countries in their region”.\(^\text{317}\)

157. The Investment Minister told us that the Trade Commissioners each “lead a regional trade strategy and have a regional trade plan”. The aim was that “rather than a one-size-fits-all analysis from London, we have regionalised well-informed, well-led insight” in each part of the world.\(^\text{318}\) The Secretary of State told us in correspondence that:

Regional Trade Plans (RTPs) [are developed] in response to economic opportunities and wider HMG strategies. The RTPs set out the priorities to be delivered across export promotion, investment and trade policy, along with DIT’s contribution to wider government objectives.\(^\text{319}\)

158. Additionally, as the Minister told us, there are “sector teams and they have sector plans”; and the Department ensures “that we have co-ordination between those industry sectors and then the regional trade plans globally and try to pull all those pieces together”.\(^\text{320}\) The Department also reports that the former Prime Minister chaired Investor Roundtables, attended by industry leaders from key sectors (Technology, Life Sciences, Automotive, Agri-Tech and Creative Content).\(^\text{321}\)

159. In 2017–18 DIT set up a new International Strategy Directorate to “coordinate our overseas work, and make sure that trade, investment and other prosperity-related issues receive due consideration in cross-government strategic planning”.\(^\text{322}\) Since February 2019 this role has been played by the new Global Strategy Directorate,\(^\text{323}\) which “essentially operates like a hub for all of the HMTCs”\(^\text{324}\) as part of its broader remit. The Trade Commissioners also work closely with the Director General for Investment.\(^\text{325}\)

**Trade Envoys and Business Ambassadors**

160. In addition, the former Prime Minister appointed 30 unpaid Trade Envoys, “selected for their experience, skills and knowledge of a particular sector or market”. Their role includes promoting inward investment and their activities include “meetings with Heads of State, senior Ministers and business leaders, hosting high-level inward delegations and

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\(^{317}\) Department for International Trade, “Final HM Trade Commissioner appointed”, 6 July 2018

\(^{318}\) Q234


\(^{324}\) “Brexit: DIT perm sec reveals how government got its trade plans ready”, Civil Service World, 14 May 2019

\(^{325}\) Department for International Trade, Director General, Investment: Mark Slaughter
UK investment policy

international events”. The Government also has a network of Business Ambassadors, comprising "43 senior business leaders [who] act as powerful advocates for the UK abroad”, including in relation to encouraging inward investment.

**Staffing levels in overseas posts**

161. As is apparent from our account thus far, a very important part of DIT’s work on investment is undertaken by staff posted overseas, working in partnership with the FCO. Table 3 contains data on the numbers of staff deployed by DIT and its predecessor, UKTI, in UK Embassies, High Commissions and Consulates.

Table 3: UKTI / DIT staff in overseas posts (headcount)

<table>
<thead>
<tr>
<th>Location</th>
<th>March 2015</th>
<th>March 2016</th>
<th>March 2017</th>
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<th>March 2019</th>
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<td>n/a</td>
<td>262</td>
<td>300</td>
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<tr>
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<td>n/a</td>
<td>n/a</td>
<td>932</td>
<td>1,112</td>
<td>1,060</td>
</tr>
<tr>
<td>Total</td>
<td>1,340</td>
<td>1,300</td>
<td>1,194</td>
<td>1,412</td>
<td>1,344</td>
</tr>
</tbody>
</table>


These staff constitute a significant proportion of the Department’s total complement of 3,500 (at March 2018). At June 2018, the Department had staff deployed in 177 overseas posts. During our visit to Japan and South Korea, we had the opportunity to meet DIT and FCO staff working on investment promotion and investment facilitation, and to learn about the positive relations they were building with a wide range of stakeholders.

162. When we subsequently asked the Minister of State for Trade Policy about reported budget cuts of 30% in overseas posts, he responded that there had been “some rationalisation”, albeit “not wide and deep”. The Department was “putting resource into where we think it is most needed and most used”, which was in creating export opportunities, seeking inward direct investment and negotiating trade agreements. The Secretary of State later told us that DIT had inherited “a baked-in reduction from what was the then UKTI budget”, with the cuts all occurring in UKTI’s final year. In response, “Rather than simply maintain all the staff where they were, we have taken the opportunity to see where we actually needed to have higher levels in the capabilities of the staff we had.” The inherited cuts meant that “funding for core budgets fell by c.£20m in 2018–19”. Consequent “structural changes to the overseas network to increase its effectiveness” included the establishment of the nine overseas regions under the HMTCs, with devolved budget responsibility. These changes made it “difficult to directly compare resources over time”, but it was estimated that the core staffing budget for the overseas network was £76.60 million in 2017–18. The 2018–19 budget had been reduced to £72.55 million, but the HMTCs had received an additional £5.5 million “to support this transition”. There

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330 Oral evidence taken on 28 November 2018, HC (2017–19) 1549, Q330

331 Oral evidence taken on 5 December 2018, HC (2017–19) 436, Q514
would be further additional funding for the European Overseas Network, allowing DIT “to strengthen and upskill the workforce in the critical areas of market access and trade policy” in the context of Brexit.\textsuperscript{332}

163. The Investment Minister further told us that there had been a £30 million reduction since 2015 in the budget for promoting exports and investment. DIT needed to make sure that “we have the right people, of the right seniority, right round the world, to go in and see those C-suite executives and get them to invest here”.\textsuperscript{333} The additional funding specifically for the European Overseas Network had amounted to £5 million,\textsuperscript{334} which had allowed the recruitment of 51 additional staff in Europe.\textsuperscript{335}

164. It is noteworthy that the Secretary of State recently indicated to us that DIT’s particular focus on market access (see Chapter 3) has clear resource implications for overseas posts, given the amount of negotiation involved in securing such concessions.\textsuperscript{336}

165. The Investment Association emphasised in evidence to us that “the network of overseas posts will need strengthening as the UK moves to its own, independent trade policy.” The posts provided industry with valuable information and a “deep understanding of the local markets on the part of the officials, gained in the promotion of exports and investment, should be a priority for the DIT’s future development”. Ensuring long-term retention of staff meant that “Questions of resourcing, local pay imbalances and skills-gaps” would have to be addressed.\textsuperscript{337}

166. We further heard from Mr Adams, of Global Counsel, that DIT needed to ensure that overseas staff acquired “the skills of being able, along with business, to recognise and tackle market entry barriers and irritants.” DIT needed to convert them “into a cohort of regulatory diplomats […] or commercial diplomats”, as the US had done it with its staff. The cuts which had occurred “have had in many respects a material effect on morale and physical presence”. In addition, frequent rotation of staff between posts denied them “the chance to develop a prolonged period of exposure and experience in a jurisdiction and how it regulates and the practical challenges of navigating it”. British businesses needed “someone who can be a genuine Sherpa for them in a market they are looking to enter”.\textsuperscript{338}

167. Mr Geldart, of the IoD, who had wide experience of China, said that there had been there:

> a reduction in DIT’s ability to perform, because they have had to cut back on where they can place people. China is a big place […] and it is very different in different places. Shenzen, Guangdong and Chengdu are different provinces, different jurisdictions, and they operate differently. When you scale back on the availability of staff and skilled staff in particular—the great temptation is to keep the same number of people but get less cost through having new, younger people coming in […]—you do not have the age, experience and

\textsuperscript{332} Rt Hon Dr Liam Fox MP to Angus Brendan MacNeil MP, 14 January 2019
\textsuperscript{333} Q235
\textsuperscript{334} Q283
\textsuperscript{335} Graham Stuart MP to Angus Brendan MacNeil MP, 28 June 2019
\textsuperscript{336} Oral evidence taken on 3 July 2019, HC (2017–19) 436, Q932
\textsuperscript{337} Investment Association (UIP0005)
\textsuperscript{338} Q193
expertise to do the navigation bit. Particularly in China, you have to build the *guanxi*—the relationships—with local government so that you can help business to be supported on the ground in real ways.\(^{339}\)

168. In Dr Gertz’s evidence to us on “investment diplomacy” (see Chapter 3) he emphasised the importance of adequate and appropriate representation abroad. Such diplomacy required “tact, negotiating skills, and business acumen”. Cuts were “likely to lead to less effective and less active investment diplomacy”.\(^{340}\)

### Outward investment

169. A report published by the then Trade and Industry Committee in 2007 indicated that UKTI’s work on investment was focused above all on inward investment; and the Committee was sceptical as to whether UKTI should be devoting resources to assisting UK firms in investing abroad.\(^{341}\)

170. DIT does state that its Mission includes driving both inward and outward investment;\(^{342}\) and, while outward investment is not mentioned in the Department’s Core Objectives, it does feature in the Single Departmental Plan under Core Objective 1.\(^{343}\) The Department states that it has “established a new approach to […] Outward Direct Investment” alongside its new FDI strategy;\(^{344}\) and it has referred to the outward investment strategy in relation to input from the Board of Trade.\(^{345}\) Even so, no details of this strategy appear to have been published. In his evidence to us, the Investment Minister alluded to the scale of UK outward investment,\(^{346}\) and referred to outward investment in the context of investment protection\(^{347}\)—but he gave us no specific information on work that the Department does to promote or assist UK investment overseas.

171. Dr Zhan told us that he thought the Government needed:

> still to promote outward investment, because outward investment plays a key role for linking the UK to the global economy, and that is very important. So far, we know that the outward FDI stock of the UK is about US $1.7 trillion, which is equivalent to close to 70% of GDP. It is very important for the UK and, of course, it also generates investment income back home. That world link is very important.\(^{348}\)

172. Mr Geldart, of the IoD, told us that in promoting overseas investment DIT should focus more on “the middle market, and more than 20 million businesses that want to export and go to new markets but do not quite know how to”\(^{349}\) Mr Adams, of Global

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339 Q193  
340 Dr Geoffrey Gertz (*UIP0014*)  
346 Q267  
347 Qq249, 267  
348 Q100  
349 Q194
Counsel, reinforced this view. There was “a huge amount of activity and latent potential in the mid-cap market, but ambition and capacity in a mid-size business do not necessarily scale up in proportion”. 350 

173. We also received evidence about outward investment from the Advertising Association, which stressed the role of the DAs in this regard “at the start of the investment journey”, as they were “more likely to understand the needs of their local companies”. At the same time, “the resources of overseas posts should be available once those companies have reached the stage in their journey of exploring that market directly”. 351

174. Regarding outward investment specifically in developing countries, we recommended in our report on Trade and the Commonwealth: developing countries that the Government should encourage investment “that supports sustainable development, particularly in the area of infrastructure. Stronger links should be developed between the UK and developing country investment promotion agencies.” 352 The Government indicated in its response that DIT was pursuing these objectives in a number of ways. 353 When we took evidence from Dr Fox in March 2019 he told us that it made sense to pursue outward investment “into some of those areas that would give countries—primarily in Africa—the ability to add value to their own produce”. 354

Measuring DIT’s performance and targeting its efforts

175. DIT states that its key performance indicators on investment are:

- for Core Objective 1 (outward investment)—the value of UK outward FDI stock; and,

- for Core Objective 2 (inward investment)—the value of UK inward FDI stock, numbers of DIT-supported FDI projects and of new jobs thereby created, and the value of Venture Capital supported by the Department. 355

176. We have already discussed, in Chapter 2, the official datasets on the value of FDI and the overall number of FDI projects. Figures in respect of successful FDI projects involving DIT (and / or one of its regional or local partners) are arrived at by the application of certain tests. In order to be counted, a project must meet DIT’s criteria for having “landed” successfully; and there must be “sufficient evidence that the DIT network has provided significant assistance to the foreign investor in the delivery of the investment project”. 356 This same metric was previously used by UKTI. 357 Data published by DIT in this respect are shown in Table 4.
Table 4: DIT-supported FDI projects

<table>
<thead>
<tr>
<th>Year</th>
<th>FDI projects</th>
<th>Target</th>
<th>Outcome</th>
<th>New jobs created</th>
<th>Safeguarded jobs</th>
<th>Total jobs</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015–16</td>
<td>n/a</td>
<td>1,731</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>2016–17</td>
<td>1,685</td>
<td>1,859</td>
<td>63,892</td>
<td>27,736</td>
<td>91,628</td>
<td></td>
</tr>
<tr>
<td>2017–18</td>
<td>n/a</td>
<td>1,682</td>
<td>67,060</td>
<td>14,146</td>
<td>81,206</td>
<td></td>
</tr>
<tr>
<td>2018–19</td>
<td>n/a</td>
<td>1,436</td>
<td>51,863</td>
<td>6,217</td>
<td>58,080</td>
<td></td>
</tr>
</tbody>
</table>


Note: DIT states that the figures for 2016–17 and 2017–18 are not comparable, due to the strengthening of validation processes for key performance indicators in 2017–18.

177. Data published by DIT in respect of Capital Investment that it has supported are shown in Table 5. This includes both Venture Capital (“strategic investment into high-value start-up, growth companies and funds from Corporate and Venture Capital investors outside the UK to accelerate their technology and expansion”) and large capital investments (“overseas institutional investment into large capital projects in Real Estate, Infrastructure and Energy”). The Department states that “Whilst capital investment is all foreign investment, most does not meet the criteria of FDI.”

Table 5 DIT-supported Capital Investment (£ million)

<table>
<thead>
<tr>
<th>Investment type</th>
<th>2017–18</th>
<th></th>
<th>2018–19</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Investments</td>
<td>Commitments to invest</td>
<td>Investments</td>
<td>Commitments to invest</td>
</tr>
<tr>
<td>Venture Capital</td>
<td>285</td>
<td>n/a</td>
<td>583</td>
<td>n/a</td>
</tr>
<tr>
<td>Large capital investments</td>
<td>3,219</td>
<td>22,374</td>
<td>3,732</td>
<td>7,373</td>
</tr>
</tbody>
</table>

Source: Department for International Trade, Inward Investment Results 2018–19, June 2019, p 10

178. As we discussed in Chapter 2, DIT is now looking at measuring the value of FDI in terms of GVA—and this also provides a means of targeting its efforts through the FDI Strategy. This approach was developed in an analysis of the economic impact of inward FDI that was published by DIT in June 2018. The Department says that this “FDI Economic Impact Tool” has been praised by multilateral bodies as a means of improving the effectiveness of investment promotion. Mr Slaughter explained that DIT was focusing on:

what best to do with the people we have available in the Department to try to help the economy of the UK. What we are trying to do […] is to prioritise the use of those people to support those elements of activity that add the most GVA to the economy. We do not want to turn away from helping any...
company that really needs assistance to make an investment and add jobs, but we do think, as we prioritise and strategise about the future economy, we need to be focusing on that GVA component of things.\footnote{Q279. See also Q278; Graham Stuart MP to Angus Brendan MacNeil MP, 28 June 2019.}

179. We heard in evidence from Dr Loewendahl, of WAVTEQ, that Ireland offered a potential model for the targeting of efforts. IDA Ireland (the equivalent of the former UKTI) and Enterprise Ireland (the Irish Government’s trade development arm) “both have targets for net investment and net job creation. They have to track how much investment they lose versus how much they win.” This contrasted with DIT’s approach of only focusing on new inward FDI projects: “They are not targeted in terms of preventing companies from closing down or downsizing, so you do not know what the net impact is at DIT.” In addition, the Irish bodies had clear targets regarding “the regional distribution of the investment they support […] They are targeted to get a certain amount of investment into deprived areas”. This “could be something interesting for the UK, given that the regional disparities are so big within the country”.\footnote{Q51}

180. A further point made by Dr Loewendahl was that DIT should do more to focus its efforts on changing the sectoral profile of UK inward investment:

Half of the job creation by greenfield FDI in the UK is retail, construction, and sales and marketing. That is not exactly strategic investment or high value-added investment, and maybe it is not investment that DIT should really be involved in and recording in its results, which it does.

The Department needed to “look at the high-quality investment as well, the high-technology manufacturing, the high-technology services”. The UK was “neck and neck” with France in competition for this; and Ireland and Germany were also strong competitors.\footnote{Q54} (It should be noted that ONS and DIT have both produced breakdowns of UK inward FDI by industrial sector.)\footnote{Office for National Statistics, “Industrial composition of foreign direct investment”, 24 July 2018; Department for International Trade, Inward Investment Results 2018–19, June 2019, pp 8–9}

181. Dr Zhan, of UNCTAD, meanwhile, thought that the Government should be focusing its efforts on “fostering the UK’s comparative advantage in terms of hosting regional headquarters”, particularly in the post-Brexit period.\footnote{Q100} When the Minister appeared before us he noted that the UK currently had “Some 40% of all global headquarters of the big Fortune 500 companies”\footnote{Q282}.

\section*{Investment facilitation in international agreements}

182. As we noted in Chapter 3, Brazil’s model Cooperation and Facilitation Investment Agreement seeks to avoid disputes arising between inward investors and host states. Dr Lauge Poulsen told us that this model, which effectively pioneers the inclusion of investment facilitation in bilateral agreements, highlights the availability of “alternative and less contentious design choices” than the UK’s model BIT. Such alternatives could benefit British investors, especially if “pursued alongside complementary efforts that shape...
domestic investment reforms in partner states.” Following Brexit, the UK had “a unique opportunity to look beyond traditional investment treaty provisions and instead promote an investment facilitation agenda that provides tangible benefits to UK investors without the controversy associated with investor-state dispute settlement.”³⁶⁷

183. We also heard that moves are afoot to implement an Investment Facilitation Agreement at the multilateral or plurilateral level, through the WTO.³⁶⁸ (Such an agreement would be analogous to the existing WTO Trade Facilitation Agreement, which seeks to simplify and expedite customs procedures between WTO members).³⁶⁹ In 2017, fourteen developing and least-developed country members of the WTO, proposed an Informal Dialogue on Investment Facilitation for Development, focusing on: improving regulatory transparency and predictability; streamlining and speeding up administrative procedures; enhancing international cooperation and addressing the needs of developing members; and other investment facilitation-related issues (such as ombudsman arrangements).³⁷⁰ In January 2018, Brazil formally submitted to the WTO proposals for an Investment Facilitation Agreement.³⁷¹ However, Dr Zhan advised us that “The political challenge is that, for the time being, half of the WTO membership is not on board and not supportive of the efforts to have the investment facilitation rules set at the WTO.”³⁷²

184. The Director General for Trade Policy at DIT, Mr Alty, told us that the Government “strongly support[ed]” the proposed WTO Investment Facilitation Agreement: “it is about reducing red tape and creating more transparency. That is a good example of where we want to make rapid progress.”³⁷³

185. A further point, which was made to us Dr Zhan, concerned the possibility that investment facilitation rules could be established at the multilateral level by the OECD. However, he warned that it would not be easy to involve developing countries—where better investment facilitation was most needed, since these countries suffered from excessive administrative discretion, bureaucracy, corruption and lack of transparency.³⁷⁴

Conclusions and recommendations

186. In conducting our inquiry, it has been very difficult to form a coherent overall picture of all the facets of the Government’s approach to investment promotion and investment facilitation. There is no single summary and we have had to piece together information from various sources. We recommend that the Department for International Trade should publish an overarching strategy (in a similar format to that of the 2018 Export Strategy), summarising the different aspects of its work in this area and explaining clearly how they fit together in a coherent and unified way. This should include outlining how the Government’s approach in respect of unilateral measures to promote and facilitate investment relates to its policy regarding investment provisions within the framework of international agreements. The Government also needs to set

³⁶⁷ Dr Lauge Poulsen (UIP0002)
³⁶⁸ Dr Lauge Poulsen (UIP0002); Qq101, 103, 109
³⁶⁹ World Trade Organization, “The Trade Facilitation Agreement: An overview”
³⁷⁰ World Trade Organization, “Investment facilitation: Relationship between trade and investment”
³⁷¹ World Trade Organization, “Structured Discussions on Investment Facilitation: Communication from Brazil”, 31 January 2018
³⁷² Q103
³⁷³ Q266
³⁷⁴ Q101
out clearly how exactly its investment strategy links to the cross-departmental Industrial Strategy and how in this regard the Department for International Trade relates to the Department for Business, Energy & Industrial Strategy and other relevant departments.

187. We recommend that, as part of its suite of services to inward investors, the Government must develop a one-stop shop for business registration and a “single electronic window”. Such services are desirable because they enhance transparency about the requirements that foreign investors must meet, as well as streamlining bureaucracy, so that it forms less of a barrier to investors.

188. We welcome the liaison that already goes on between the Department for International Trade and partner organisations at the devolved and local levels in respect of investment promotion and investment facilitation, but there needs to be more joined-up governance in this respect. Adequate attention must be paid to involving partner agencies at all levels in both outbound and inbound trade missions, so as to maximise their impact. The Government should show, as part of its investment strategy, that it is working closely with the university sector in attracting inward investment, given the crucial role of higher education institutions play in the investment “ecosystems” of their local areas.

189. We recommend that the Government spell out more clearly the role being played by HM Trade Commissioners, the Prime Minister’s Trade Envoys and UK Business Ambassadors in relation to investment and show how exactly their work is making a difference.

190. The Government must acknowledge fully the importance of the work done by staff on the ground in overseas posts in relation to promoting both inward and outward investment. There is clear evidence that cuts in overseas representation have had a negative impact and we recommend that the Government should ensure sufficient resources are dedicated to this area. The UK faces significant competition from some other European nations in promoting UK investment abroad and must not fall behind. The Government must study how competitor nations work in this regard with a view to learning from their approach. The Government should also review the skill-set of staff in overseas postings, to ensure that they are able to work in concert with business to recognise and tackle adequately barriers and sources of friction in relation to market entry. The Government should in addition consider whether regular rotation of staff around overseas posts might not be the most effective approach and whether more prolonged postings would be more appropriate, in so far as this could facilitate the accumulation of in-depth local knowledge.

191. Outward investment, as well as inward investment, can bring many economic and other benefits to the UK. We recommend that the promotion and facilitation of outward investment should continue to form a key part of Government’s investment strategy. This should include emphasis on pursuing other goals, such as those related to sustainable development, human rights, and climate, through outward investment.

192. We are not convinced of the adequacy of the performance metric currently employed by the Department for International Trade regarding involvement in inward investment successes, measured in project numbers. We recommend that the Government should do more to demonstrate that its efforts are directly responsible for
those investment successes for which it seeks to claim credit. We heard about the work that the Department is undertaking on gauging the impact of Foreign Direct Investment in terms of Gross Value Added, as an aid to targeting its efforts. This is potentially welcome, provided that the measure of Gross Value Added that is used is sufficiently robust. The Government should also go further than developing this measure. Data are needed on the impact of the different types of Foreign Direct Investment; and the Government should, in concert with partner organisations, develop devolved-nation and regional targets for investment, as well as net targets for the capital value of investment flows and numbers of associated jobs. We recommend examining the targets used in the Republic of Ireland as a possible model. In terms of targeting its efforts, the Government should also be much more strategic about promoting inward investment, with greater emphasis in its investment strategy on attracting investment in high value-added sectors. In particular, the UK must actively seek to maintain its pre-eminent position as a location for European and global headquarters of international businesses.

193. We welcome the Government’s support for an Investment Facilitation Agreement through the World Trade Organization (along the lines of the existing Trade Facilitation Agreement)—but this must be supportive of sustainable development, human rights and climate goals. We recommend that the Government consider the potential inclusion of investment facilitation provisions in bilateral International Investment Agreements (as in the model developed by Brazil) and report back to us on this.
5 Regulation of UK inward investment

194. The UK’s inward investment market has long been highly open and liberalised. As Dr Loewendahl, of WAVTEQ, put it to us: “It is easier to buy UK companies than anywhere else” in the world.\textsuperscript{375} The possible placing of some restrictions on inward investment into the UK continues to be a controversial issue.

Blocking harmful investment

195. Dr Linsi, of Amsterdam University, reminded us of the “very heated” debate around the purchase of Cadbury by the US firm Kraft in 2010.\textsuperscript{376} Mergers and acquisitions involving well-established and well-known UK firms have long had the capacity to generate such political controversy; and, as Mr Adams, of Global Counsel, told us, “politicians have got a lot more active in their scrutiny of inward investment”.\textsuperscript{377}

196. Honda Motor Europe told us that “investment policy should focus on attracting capital and expertise that can develop and strengthen businesses”, warning that a “policy that simply facilitates the sale of UK businesses to overseas buyers could lead to the hollowing out of the UK supply chain.”\textsuperscript{378} The TUC also argued that there should be conditions attached to inward investment, arguing that the Government should “ensure that investors in the UK follow responsible business conduct and promote respect for workers’ rights.”\textsuperscript{379}

197. The Conservative Party Manifesto for the 2017 election stated that: “We welcome overseas investment and want investors to succeed here but not when success is driven by aggressive asset-stripping or tax avoidance.”\textsuperscript{380} However, it is hard to discern any sign of the Government taking action in this regard.

198. When the Investment Minister appeared before us, he stated:

One reason that we are economically strong is that we are so open to investment and we do not allow protectionist sentiment to make us go around blocking people because we are selling our crown jewels that could have been billion-dollar companies and have now been bought by someone else.

He did acknowledge that “some mergers and acquisitions do not bring a great deal of value to the UK” and that it is “certainly not my Department’s job to support those where that happens”.\textsuperscript{381} But he gave no indication that the Government was developing policies to block inward investments that could be regarded as economically detrimental to the UK in some way.

\textsuperscript{375} Q59
\textsuperscript{376} Q13
\textsuperscript{377} Q201
\textsuperscript{378} Honda Motor Europe (UIP0021)
\textsuperscript{379} Trades Union Congress (UIP0009)
\textsuperscript{380} The Conservative and Unionist Party Manifesto 2017, p 17
\textsuperscript{381} Q239
Proposed investment screening regime

199. A particularly concerning form of possible harm that could result from inward investment relates to the compromising of national security. This has received particular attention recently in connection with the proposed involvement of the Chinese company Huawei in the building a 5G wireless network for the UK telecoms sector. A decision was reportedly taken at the National Security Council in April 2019 to allow Huawei to help build the “non-core” parts of the UK’s 5G network, such as antennae. However, this information apparently stems from a leak and has not been confirmed by the Government.\(^{382}\) It has also been reported that a final decision on this issue has been delayed after the US placed Huawei on a blacklist.\(^{383}\)

200. In July 2018, the Department for Business, Energy and Industrial Strategy (BEIS) published a White Paper on National Security and Investment which proposed a new investment-screening regime. This was the subject of a public consultation, which ended in October 2018; the Government’s response is still awaited. In the foreword to the White Paper, the Secretary of State for BEIS, Rt Hon Greg Clark,\(^{384}\) wrote that:

> an open approach to international investment must include appropriate safeguards to protect our national security and the safety of our citizens. Technological, economic and geopolitical changes mean that reforms to the Government’s powers to scrutinise investments and other events on national security grounds are required.

He emphasised that many of the UK’s allies were “similarly looking to modernise their powers in this area”.\(^{385}\) The proposed new regime was “only related to national security”, which was “not the same as the public interest or the national interest.”\(^{386}\)

201. The regime would involve a voluntary notification scheme, whereby parties to a “trigger event” (investment, merger, or other activity) would submit a notification to Government if they considered that the transaction raised possible national security concerns. The Government would then screen notifications and conduct full assessments of those it considered did raise such concerns. If this assessment demonstrated that national security was at risk, a Cabinet minister would decide to “impose such remedies as [are] necessary and proportionate”. The White Paper states that “As a last resort, this might mean blocking the trigger event or unwinding it if it had already taken place.” The Government also states that it reserves the right to carry out national security assessments of investments and other events of which it has not been notified.\(^{387}\) DIT’s role in this new regime is not specified.

\(^{382}\) “Huawei 5G row: Ministers demand leak inquiry”, BBC News online, 24 April 2019

\(^{383}\) “UK decision on Huawei 5G faces fresh delay”, Financial Times, 4 June 2019

\(^{384}\) Shortly after this report was agreed by the Committee, on 24 July 2019, Mr Clark was succeeded by Rt Hon Andrea Leadsom as Secretary of State for BEIS.

\(^{385}\) Department for Business, Energy and Industrial Strategy, National Security and Investment: A consultation on proposed legislative reforms, July 2018, p 3

\(^{386}\) Department for Business, Energy and Industrial Strategy, National Security and Investment: A consultation on proposed legislative reforms, July 2018, p 9

202. In December 2018, the Chair of the Business, Energy and Industrial Strategy Committee issued a statement on the proposals, following correspondence with the Government. This warned of “potential for conflict to arise between defence and business interests in judging foreign takeovers” and expressed surprise that the proposals did not make clear whether it would be the Secretary of State for BEIS, or for Defence, who would be taking a final decision on whether to block an investment.388

203. Within the EU, a new investment screening framework came into force in April 2019. This allows the Commission to issue opinions where “an investment poses a threat to the security or public order of more than one Member State, or when an investment could undermine a project or programme of interest to the whole EU, such as Horizon 2020 or Galileo”. It is, therefore, broader in scope than the current UK proposals. The EU legislation also facilitates information sharing amongst Member States and the Commission, as well as establishing requirements for those states that wish to have a screening mechanism at the national level. Member States have the final say on whether or not to allow an investment in their territory.389 While the UK remains a member of the EU, it will continue to be covered by this framework.

204. Mr Geldart, of the IoD, told us that investment screening “is about risk management”; and judgements about national security were a matter for security bodies such as GCHQ.390 Mr Adams, from Global Counsel, told us:

> as long as it is predictable and transparent and as depoliticised as possible, I don’t think investors are particularly worried about it. In fact, in some cases I think they actually recognise that it can perform a valuable kind of certification role […]391

205. When we asked the Investment Minister about the proposed new screening regime, he said:

> The UK supports investment screening for national security purposes, although that should not be conflated with screening to control market access […] We unapologetically seek to protect the UK from a national security and critical national infrastructure point of view, but we absolutely want to ensure that the framework that we create is not, and ideally cannot, be used as a form of protectionism.

The powers being sought were in line with those held by the UK’s allies. The Government would report on the consultation “in due course”.392

**Conclusions and recommendations**

206. While the UK has one of the most liberalised investment regimes in the developed world, there is still a need for some degree of regulation in respect of inward investment.
207. We note that, while the 2017 Conservative Manifesto expressed opposition to inward investment “driven by aggressive asset-stripping or tax avoidance”, there has been no indication that the Government is taking any action to implement this. We recommend that the Government should set out clear policy on what it considers to constitute economically harmful investment—and state how it plans to act against it.

208. Regarding investment screening, we recommend that the Government provide more clarity on how the balance will be struck between promoting and facilitating inward investment, on the one hand; and safeguarding national security, on the other. In particular, the Government must set out in some detail what the role of the Department for International Trade will be in the envisaged new investment screening regime—as well as which Cabinet minister will take the ultimate decision on whether or not to block an investment. This information should be provided in the Government’s response to the White Paper on National Security and Investment.
Conclusions and recommendations

Defining and measuring overseas investment

1. Appropriate and effective Government policies in respect of Foreign Direct Investment can only be formulated on the basis of reliable information on the nature and extent of such investment, and how it varies over time. However, there are significant limitations in the data which the Government collects and publishes in this regard. (Paragraph 42)

2. Figures published by the Department for International Trade relating to numbers of new projects, and of jobs associated with them, are of limited usefulness, given that the Department does not monitor closures of companies associated with inward investment, or downsizing by such companies. We recommend that the Department should consider what steps it can take to make good these deficiencies in its data and report to us on this by the end of this year. (Paragraph 43)

3. The Department also relies in part on data from private-sector databases, which can be opaque and may be of limited reliability. Where the Department does draw on any private-sector datasets in constructing its own statistics, we recommend that, so far as possible, it should seek and publish information about the sources and methodology employed by the bodies concerned. (Paragraph 44)

4. The Office for National Statistics publishes data on the capital value of inward Foreign Direct Investment—but it does not separate out greenfield investment from mergers and acquisitions, or from investment through Special Purpose Entities. We note the Office’s desire to generate better data in this regard, possibly by finding ways of reconciling its “top-down” figures (derived from the Balance of Payments) with the “bottom-up” data (relating to specific investment projects) that is gathered by the Department for International Trade. We recommend that the two departments report to us, by the end of this year, on what they are doing to develop such collaboration. We also recommend evaluation of the methodology employed by the US Bureau of Economic Analysis as a possible model for generating a reliable dataset on the capital value of the different categories of inward Foreign Direct Investment. (Paragraph 45)

5. The Government regularly cites statistics on Foreign Direct Investment from various sources; in doing so, it needs to be careful not to risk giving the impression of cherry-picking figures so as to convey the most favourable impression possible. In the presentation of investment data, care must be taken always to give the full picture, with clear distinctions made between: stocks and flows of investment, greenfield investment, and mergers and acquisitions; and year-on-year changes and multi-year trends. We recommend that the Department for International Trade should consider commissioning the Office for National Statistics, or some other appropriate body at arm’s length from the Government, to publish on a regular basis a comparison and synthesis of the various statistical data-sources on UK Foreign Direct Investment, to give the fullest possible picture of trends and developments. (Paragraph 46)
Investment liberalisation and investment protection

6. While we appreciate that International Investment Agreements fall within the portfolio of the Trade Policy Minister, we were disappointed by the limited amount that the Investment Minister said to us on this topic. Although we did take evidence from the senior official responsible for International Investment Agreements, the Director General for Trade Policy, he too was only able to provide us with limited information. Regarding the Government’s plans on post-Brexit UK International Investment Agreements neither the Minister nor the Director General for Trade Policy was able to set out even basic lines of policy. The Minister argued that the duty of sincere cooperation, which the UK is currently under as an EU Member State, prevents the Government from formulating such a policy until after Brexit. However, we find it hard to discern any credible legal basis for this claim. Furthermore, we note that the Government is already taking steps to develop a post-Brexit trade policy, through its consultation on a number of prospective trade agreements; and that Trade Working Groups are conducting scoping talks with several prospective trade agreement partners. The Government needs to have a policy in place for the eventuality of a Brexit scenario in which there is no transition period—which could occur on 31 October 2019. We are alarmed that no such policy seems yet to have been formulated. (Paragraph 112)

7. In formulating its policy on International Investment Agreements, the UK cannot just go back to the approach it used before 2009 (when negotiating such treaties became a formal EU competence), given how hugely controversial international investment policy has since become and how significantly the policy environment has, in consequence, changed. We recommend that the Government should clarify where it stands on investment protection standards and dispute resolution mechanisms for investors. It must carefully consider and fully evaluate specific alternatives to conventional Investor-State Dispute Settlement provisions—including the EU's Investment Court System and its proposal for a Multilateral Investment Court. The Government should also consider the compatibility of investment liberalisation and investment protection provisions in International Investment Agreements with UK policies in the areas of development, climate and human rights. (Paragraph 113)

8. Another area the Government must consider is that of potentially including provisions in International Investment Agreements to counterbalance investor rights, such as enshrining investor obligations, allowing for state counterclaims or “carve-outs” from investment protection. If the Government chooses not to adopt any such provisions, it must explain the reasoning behind that decision. (Paragraph 114)

9. As well as failing to develop a policy in respect of International Investment Agreements, the Government has little to say in respect of its policy at the multilateral and plurilateral levels in relation to investment liberalisation and investment protection. We recommend that the Government set out, in its response to this Report, what approaches it plans to take at these levels. (Paragraph 115)

Investment promotion and investment facilitation

10. In conducting our inquiry, it has been very difficult to form a coherent overall picture of all the facets of the Government’s approach to investment promotion
and investment facilitation. There is no single summary and we have had to piece together information from various sources. We recommend that the Department for International Trade should publish an overarching strategy (in a similar format to that of the 2018 Export Strategy), summarising the different aspects of its work in this area and explaining clearly how they fit together in a coherent and unified way. This should include outlining how the Government’s approach in respect of unilateral measures to promote and facilitate investment relates to its policy regarding investment provisions within the framework of international agreements. The Government also needs to set out clearly how exactly its investment strategy links to the cross-departmental Industrial Strategy and how in this regard the Department for International Trade relates to the Department for Business, Energy & Industrial Strategy and other relevant departments. (Paragraph 186)

11. We recommend that, as part of its suite of services to inward investors, the Government must develop a one-stop shop for business registration and a “single electronic window”. Such services are desirable because they enhance transparency about the requirements that foreign investors must meet, as well as streamlining bureaucracy, so that it forms less of a barrier to investors. (Paragraph 187)

12. We welcome the liaison that already goes on between the Department for International Trade and partner organisations at the devolved and local levels in respect of investment promotion and investment facilitation, but there needs to be more joined-up governance in this respect. Adequate attention must be paid to involving partner agencies at all levels in both outbound and inbound trade missions, so as to maximise their impact. The Government should show, as part of its investment strategy, that it is working closely with the university sector in attracting inward investment, given the crucial role of higher education institutions play in the investment “ecosystems” of their local areas. (Paragraph 188)

13. We recommend that the Government spell out more clearly the role being played by HM Trade Commissioners, the Prime Minister’s Trade Envoys and UK Business Ambassadors in relation to investment and show how exactly their work is making a difference. (Paragraph 189)

14. The Government must acknowledge fully the importance of the work done by staff on the ground in overseas posts in relation to promoting both inward and outward investment. There is clear evidence that cuts in overseas representation have had a negative impact and we recommend that the Government should ensure sufficient resources are dedicated to this area. The UK faces significant competition from some other European nations in promoting UK investment abroad and must not fall behind. The Government must study how competitor nations work in this regard with a view to learning from their approach. The Government should also review the skill-set of staff in overseas postings, to ensure that they are able to work in concert with business to recognise and tackle adequately barriers and sources of friction in relation to market entry. The Government should in addition consider whether regular rotation of staff around overseas posts might not be the most effective approach and whether more prolonged postings would be more appropriate, in so far as this could facilitate the accumulation of in-depth local knowledge. (Paragraph 190)
15. Outward investment, as well as inward investment, can bring many economic and other benefits to the UK. We recommend that the promotion and facilitation of outward investment should continue to form a key part of Government’s investment strategy. This should include emphasis on pursuing other goals, such as those related to sustainable development, human rights, and climate, through outward investment. (Paragraph 191)

16. We are not convinced of the adequacy of the performance metric currently employed by the Department for International Trade regarding involvement in inward investment successes, measured in project numbers. We recommend that the Government should do more to demonstrate that its efforts are directly responsible for those investment successes for which it seeks to claim credit. We heard about the work that the Department is undertaking on gauging the impact of Foreign Direct Investment in terms of Gross Value Added, as an aid to targeting its efforts. This is potentially welcome, provided that the measure of Gross Value Added that is used is sufficiently robust. The Government should also go further than developing this measure. Data are needed on the impact of the different types of Foreign Direct Investment; and the Government should, in concert with partner organisations, develop devolved-nation and regional targets for investment, as well as net targets for the capital value of investment flows and numbers of associated jobs. We recommend examining the targets used in the Republic of Ireland as a possible model. In terms of targeting its efforts, the Government should also be much more strategic about promoting inward investment, with greater emphasis in its investment strategy on attracting investment in high value-added sectors. In particular, the UK must actively seek to maintain its pre-eminent position as a location for European and global headquarters of international businesses. (Paragraph 192)

17. We welcome the Government’s support for an Investment Facilitation Agreement through the World Trade Organization (along the lines of the existing Trade Facilitation Agreement)—but this must be supportive of sustainable development, human rights and climate goals. We recommend that the Government consider the potential inclusion of investment facilitation provisions in bilateral International Investment Agreements (as in the model developed by Brazil) and report back to us on this. (Paragraph 193)

**Regulation of UK inward investment**

18. While the UK has one of the most liberalised investment regimes in the developed world, there is still a need for some degree of regulation in respect of inward investment. (Paragraph 206)

19. We note that, while the 2017 Conservative Manifesto expressed opposition to inward investment “driven by aggressive asset-stripping or tax avoidance”, there has been no indication that the Government is taking any action to implement this. We recommend that the Government set out clear policy on what it considers to constitute economically harmful investment—and state how it plans to act against it. (Paragraph 207)

20. Regarding investment screening, we recommend that the Government provide more clarity on how the balance will be struck between promoting and facilitating inward
investment, on the one hand; and safeguarding national security, on the other. In particular, the Government must set out in some detail what the role of the Department for International Trade will be in the envisaged new investment screening regime—as well as which Cabinet minister will take the ultimate decision on whether or not to block an investment. This information should be provided in the Government’s response to the White Paper on National Security and Investment. (Paragraph 208)
Formal minutes

Wednesday 24 July 2019

Members present
Angus Brendan MacNeil, in the Chair
Mr Nigel Evans  Julia Lopez
Mr Marcus Fysh

Draft Report (UK investment policy) proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 208 agreed to.

Summary agreed to.

Resolved, That the Report be the Seventh Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 7 October at 9.45 a.m.]
Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee’s website.

Wednesday 23 January 2019

Dr Lukas Linsi, Political Economist, Amsterdam University, Professor Richard Kneller, Professor of Economics, Nottingham University, Courtney Fingar, Editor-In-Chief, fDi Magazine

Dr Ilona Serwicka, UK Trade Policy Observatory, Jonathan Athow, Deputy National Statistician and Director General, Economic Statistics, Office for National Statistics, Dr Henry Loewendahl, Group CEO, WAVTEQ

Wednesday 27 February 2019

Dr James X Zhan, Director of the Investment and Enterprise Division, UN Conference on Trade and Development, Alan Wilson, Head of International Investment, Invest Northern Ireland, Chris Henning, Corporate Director, Development & Growth, Nottingham City Council

Dr Axel Berger, Senior Researcher, German Development Institute, Dr J Robert Basedow, Assistant Professor in International Political Economy, London School of Economics and Political Science, Dr Stephen Woolcock, Associate Professor of International Relations, London School of Economics and Political Science

Wednesday 1 May 2019

Professor David Collins, Professor of International Economic Law, City, University of London, Ruth Bergan, Coordinator, Trade Justice Movement, Pia Eberhardt, Researcher and campaigner, Corporate Europe Observatory

Stephen Adams, Senior Director, Global Counsel, Jack Knight, Deputy Chief Executive, Investment Association, Jonathan Geldart, Regional Chair for Yorkshire and Humber, Institute of Directors

Wednesday 12 June 2019

Graham Stuart MP, Minister for Investment, Department for International Trade, Mark Slaughter, Director General for Investment, John Alty, Director General, Trade Policy Group
Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee’s website.

UIP numbers are generated by the evidence processing system and so may not be complete.

1. Advertising Association (UIP0008)
2. Basedow, Dr Robert (UIP0020)
3. Bonnitcha, Dr Jonathan (UIP0001)
4. Calvert, Dr Julia (UIP0010)
5. Choudhury, Barnali (UIP0019)
6. Gertz, Dr Geoffrey (UIP0014)
7. Global Justice Now (UIP0007)
8. Honda (UIP0021)
9. Institute of Directors (UIP0015)
10. The Investment Association (UIP0005)
11. Lenihan, Dr Ashley (UIP0017)
12. Poulsen, Dr Lauge (UIP0002)
13. Railway Industry Association (UIP0012)
14. techUK (UIP0018)
15. Trade Justice Movement (UIP0004)
16. Trades Union Congress (UIP0009)
17. Traidcraft (UIP0006)
18. United Nations Conference on Trade and Development (UIP0022)
19. Waibel, Dr Michael (UIP0011)
20. War on Want (UIP0013)
21. Williams, Dr Zoe (UIP0016)
22. Yackee, Professor of Law Jason (UIP0003)
## List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee’s website. The reference number of the Government’s response to each Report is printed in brackets after the HC printing number.

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