



Lord Goodlad
Chair
Secondary Legislation Scrutiny Committee
House of Lords
London
SW1A 0PW

23 June 2014

The UK's Bilateral Investment Treaty with Colombia

Dear Lord Goodlad and Members of the Secondary Legislation Scrutiny Committee,

The UK-Colombia Bilateral Investment Treaty was laid before Parliament on 4th June for forty days, for ratification through a negative resolution procedure.

While this Treaty is designed to provide important protections to British investments in Colombia, we are concerned that it does not incorporate significant investment treaty reforms which are being proposed at the European level, neither does it reflect the intense public debate underway around the practice of Investor State Dispute Settlement (ISDS); and that it could create particular problems for the Government of Colombia in pursuing vital land reform and other public policy measures. Traidcraft¹ and ABColombia² therefore urge the Committee to consider reporting concerns to the House with a view to a thorough review of the Treaty before ratification proceeds.

The European Commission is in the middle of a critical consultation exercise on ISDS (in the EU-USA Transatlantic Trade and Investment Partnership) and is proposing some significant reforms. The House of Lords recent 'European Union Committee - Fourteenth Report: The Transatlantic Trade and Investment Partnership'³ found that:

- "proponents of investment protection provisions enforced by an ISDS mechanism have yet to make a compelling case for their inclusion in TTIP or to convincingly dispel public concerns"⁴ and stated:
- "We support the Government's stance on the inclusion of investment protection provisions only on condition that the EU is able to secure the same range of safeguards in an agreement with the United States as were included in the CETA agreement with Canada."⁵

The Colombia Treaty does not contain the CETA safeguards. The Government has also acknowledged that inclusion of ISDS in the UK-Colombia treaty is problematic (speech by Foreign Office Minister, Hugo Swire, 23rd October 2013), but had no alternatives to propose.

¹ Traidcraft comprises Traidcraft Plc, one of the UK's leading fair trade companies sourcing products from around thirty countries worldwide, and Traidcraft Exchange a development NGO. We conduct research and advocacy work on trade justice and corporate accountability issues.

² ABColombia is the joint advocacy platform of CAFOD, Christian Aid, SCIAF, Oxfam and Trocaire on Colombia.

³ Accessed at: <http://www.publications.parliament.uk/pa/ld201314/ldselect/ldcom/179/17902.htm>

⁴ Paragraph 169

⁵ Paragraph 170

We have been advised by an arbitration lawyer that the Treaty's current language creates significant legal uncertainty for the Colombian government. Bilateral Investment Treaties are supposed to provide protection to foreign investors from government action (originally expropriation, in the days of newly independent former colonies) which could reduce the monetary value of their investment. However, they also grant investors the right to sue democratically elected Governments in private international arbitration tribunals⁶ whilst neither the host Government nor communities affected by such investment have reciprocal rights to challenge that investment.

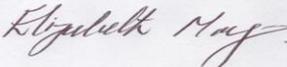
Investors are increasingly using this tool to challenge government policy: in 2012, the highest number of new claims was recorded. Compared to the three decades before, the number of disputes has risen 250% since 2000.

President Santos has just been re-elected in Colombia with an ambitious agenda for peace. There are 5.7 million internally displaced people in Colombia due to the conflict; more than in any other country in the world except Syria.⁷ A land restitution law which is an important part of the peace process has been commended by the United Nations. This Treaty would allow investor challenges to the land restitution law and other sensitive areas of policy making at this critical time.

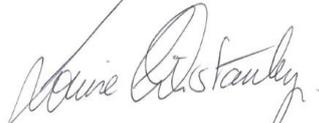
Furthermore, the joint Foreign Office and Department for Business, Innovation and Skills 'Action Plan on Business and Human Rights',⁸ announced on the 4th September 2013, states that investment agreements should "incorporate the business responsibility to respect human rights". Despite the importance that the UK attaches to its work on human rights in Colombia, the proposed Treaty does not include these human rights responsibilities.

We hope that the Secondary Legislation Scrutiny Committee will report concerns to the House on the absence in this Treaty both of important reforms, and of human rights commitments already made by the UK government. We would be pleased to provide any further information that would be valuable.

Yours sincerely,



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Traidcraft



Louise Winstanley, Programme and Advocacy Manager
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⁶ Investors can challenge a range of state measures including changes to domestic regulatory frameworks. For example, US tobacco giant Philip Morris is suing Uruguay and Australia over their anti-smoking laws. The company is challenging government's health policies on the basis that that warning labels and plain packaging for cigarettes prevent it from effectively displaying its trademark.

⁷ Internal Displacement Monitoring Centre, Global Overview, 2014

⁸ Good Business: Implementing the UN Guiding Principles on Business and Human Rights, September 2013.