# India-UK investment pact falters over dispute redress mechanism

**DEAL SNAG.** Differences persist also over the extent of investment protection

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**STRATEGIC PARTNERSHIP.** Trade Commissioner for South Asia and British Deputy High Commissioner for Western India Harjinder Kang (third left) and others at an event on the India-UK Free Trade Agreement in Mumbai on Wednesday PTI

The India-UK Bilateral Investment Treaty (BIT) could not be concluded alongside the Comprehensive Economic and Trade Agreement (CETA), which came into force on July 15, as the two sides were unable to bridge differences over key provisions of the investment pact, including Investor-State Dispute Settlement (ISDS), according to British trade sources.

### STEEL SAFEGUARDS

The sources further said that the UK's provision on steel import safeguards had nothing to do with the trade pact, as the matter related to the country's domestic capacity and national security concerns. But India had been assigned quotas to stay competitive.

"As far as the proposed BIT is concerned, there wasn't a deal on the table that could work for both sides. But it doesn't mean that the UK has not been investing in India and vice versa," a British trade source said on the inability of India and the UK to conclude a BIT alongside the CETA and the Double Contributions Convention (DCC) or the social security agreement.

### TREATY IMPASSE

The BIT remained inconclusive primarily because the two sides could not reconcile differences over the Investor-State Dispute Settlement (ISDS) mechanism and the extent of investment protection.

While the UK sought easier access for its investors to international arbitration in the event of treaty violations, India insisted on its 2015 Model BIT approach, which requires investors to first exhaust domestic legal remedies (generally for at least five years) before approaching international arbitration.

New Delhi believes older treaties exposed it to excessive litigation and constrained its policy-making space. There were also some disagreements on the definition of investment, carve-outs to protect the government's right to regulate in areas such as taxation, and the inclusion and duration of a sunset clause that would ensure that investments made while a BIT is in force continue to enjoy treaty protection for a specified period even after the agreement is terminated, the industry source added.

### STEEL IMPORTS

On the new safeguard mechanism for steel imports, which came into effect in the UK on July 1, the British trade source explained that it was a domestic policy measure and not linked to the India-UK CETA.

"The mechanism was introduced to protect the UK's steelmaking capacity and ensure a reliable domestic supply for national security and defence needs," the source said. At the same time, India's competitive interests had been safeguarded as Indian exporters would continue to have access to a country-specific quota as well as the residual quota, enabling them to compete under the new regime, the source added.