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[www.gov.uk/ukti](http://www.gov.uk/ukti)

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Dear Tim,

Thank you for your letter of 1 September to Vince Cable on behalf of your constituent who has concerns about the EU-US Transatlantic Trade and Investment Partnership (TTIP). I am replying as the Minister responsible and I apologise for the delay in this reply.

Let me reassure your constituent that the inclusion of investor-state dispute settlement (ISDS) provisions in TTIP will not threaten the Government's right to regulate or determine policy in the public interest. Let me also be clear that the NHS will not be privatised through TTIP, nor will TTIP open NHS services to further competition.

TTIP is a once-in-a-generation opportunity to create the largest free trade area in the world. It would bring huge economic benefits on both sides of the Atlantic, increasing trade and investment, creating thousands of jobs, reducing prices and increasing choice for consumers. Independent analysis shows that an ambitious agreement could give an annual boost to the British economy of as much as £10 billion each year. This translates to additional disposable income of about £400 per year for an average UK household. That is why we are pushing for a broad agreement that eliminates the vast majority of tariffs on trade between the two markets and reduces other unnecessary barriers to trade.

#### Investor Protection and Investor-State Dispute Settlement (ISDS)

There have been some misunderstandings about what investment protection provisions in investment treaties offer investors and what actions the tribunals which arbitrate the agreement can take. These provide protection to investors from overseas from unfair treatment or discrimination on nationality grounds, as already occurs within the EU. We would oppose unfair or discriminatory action by a state against UK investors abroad. We are simply offering similar guarantees to foreign investors here. The UK has already signed over 90 investment protection treaties and the UK Government has never lost an



ISDS case, while many UK investors overseas who have suffered discrimination, expropriation and lack of due legal process have relied on ISDS.

The ISDS mechanism enables international investors to seek compensation if they think the provisions in the treaty have been breached. Foreign individuals and businesses have access to UK courts, but they do not typically have the right to ask those courts directly to enforce breaches of treaty rights, which is why the ISDS mechanism ensures access to justice. Tribunals cannot overthrow the sovereignty of Parliament, strike down or overturn laws. ISDS mechanisms remain unused in the majority of international investment treaties.

The recently published EU-Canada Comprehensive Economic and Trade Agreement (CETA) exemplifies developments in investment protection and ISDS provisions for modern trade agreements. These developments include: clarifying and explicitly stating the right of governments to regulate in the public interest, making the unsuccessful party liable for the costs of the claim, prohibiting claims from being pursued simultaneously under ISDS provisions and in domestic courts, and improving transparency in the overall process. You can find the provisions included in CETA on the European Commission's website at: [trade.ec.europa.eu/doclib/docs/2013/november/tradoc\\_151918.pdf](http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151918.pdf)

The exact investment protection and ISDS provisions in TTIP are still under negotiation. The European Commission carried out a public consultation on these provisions earlier this year. The consultation sought stakeholder views on what modern investment provisions should look like in TTIP drawing on the developments included in the CETA text and outlined above. If included in TTIP they should protect the right of governments to regulate robustly in the public interest and help deter investors from making unnecessary and speculative claims.

Your constituent makes reference to investment protection/ISDS effectively meaning that regulations are not introduced for fear of being sued ("regulatory chill"). This has not been the case under the UK's existing treaties. The European Commission's consultation on TTIP makes clear that the EU wants to make sure that Parties' right to regulate is confirmed as a basic underlying principle.

Your constituent raises concerns about the ISDS mechanism comprising of behind-closed-doors arbitration. Transparency of ISDS cases is widely recognised to be an issue. The new United Nations (UNCITRAL) *Rules on Transparency in Treaty-based Investor-State Arbitration* address this. Both the EU and US support inclusion of these transparency rules in all future free trade agreements. These rules require that most documents will be publicly available and hearings will be open to the public. In addition interested parties will be able to file submissions to the ISDS tribunal.

Your constituent also raises concerns about cases being decided by corporate lawyers with vested interests. Cases are brought before independent arbitrators, appointed jointly by the investor and country in question. The arbitration system has been developed based on commercial dispute resolution best-practice and is intended to interpret complex issues arising under international treaty law. It is also worth noting that the CETA agreement includes various measures that will improve the selection of arbitrators. A pre-agreed roster of approved arbitrators will be established ensuring



impartiality and there are plans to develop an innovative Code of Conduct to tackle any conflict of interest.

### Public Services

There have also been some concerns expressed that TTIP would mean that public services must be opened up to the private sector. This is not the case. The European Commission has explicitly ruled out public services from the scope of any market liberalisation in TTIP. TTIP will not change the fact that it is up to the UK to decide how public services, including the NHS, are run. It is for EU Member States to decide for themselves whether or not to open up public services to competition. The European Commission's chief negotiator on TTIP has also confirmed in writing that EU countries will be free to decide how they run their public health systems. This letter is published on the Commission's website at:

[ec.europa.eu/unitedkingdom/press/frontpage/2014/14\\_72\\_en](http://ec.europa.eu/unitedkingdom/press/frontpage/2014/14_72_en)

Following the latest round of negotiations, both the European Commission and the US chief negotiators provided further reassurances on the issue of public services. You can find their statements here:

[www.ustr.gov/about-us/press-office/speeches/2014/October/Opening-Remarks-by-US-and-EU-Chief-Negotiators-for-TTIP-Round-Seven-Press-Conference](http://www.ustr.gov/about-us/press-office/speeches/2014/October/Opening-Remarks-by-US-and-EU-Chief-Negotiators-for-TTIP-Round-Seven-Press-Conference)

### EU-Canada Comprehensive Economic and Trade Agreement (CETA)

As mentioned above, the CETA text was recently published by the European Commission in October. The next steps are a legal review and translation when the text may be subject to some changes. Once finalised, the text will not be binding under international law until completion of the ratification process.

### More information

Your constituent will be interested to know that an inquiry into TTIP was conducted by the House of Lords EU Sub-Committee on External Affairs. The Committee's report was published in May this year and its findings debated in the House of Lords on 17 June. The Government has published its response to the report which is available on the government website (Gov.UK) at: [www.gov.uk/government/publications/transatlantic-trade-and-investment-partnership-ttip-government-response-to-the-house-of-lords-report](http://www.gov.uk/government/publications/transatlantic-trade-and-investment-partnership-ttip-government-response-to-the-house-of-lords-report)

The Government agrees with the House of Lords report's assessment that an ambitious TTIP agreement would boost employment and prosperity in the UK, while steps can be taken on ISDS to strike a balance between protection for investors and the right of states to regulate.

I enclose three leaflets produced by the Department for Business, Innovation & Skills that you may wish to pass on to your constituent. The first leaflet sets out some key facts about TTIP along with its anticipated benefits, the second provides some brief factual background to ISDS, while the third addresses some myths about the proposed agreement, making clear that it will not threaten the delivery of our public services.

Further information about the TTIP negotiations is available on the Gov.UK website at: [www.gov.uk/government/collections/transatlantic-trade-and-investment-partnership-ttip](http://www.gov.uk/government/collections/transatlantic-trade-and-investment-partnership-ttip) and the European Commission's website at: [ec.europa.eu/trade/policy/in-focus/ttip/](http://ec.europa.eu/trade/policy/in-focus/ttip/)

Thank you, again, for passing on your constituent's concerns. I hope this response reassures them that we are getting the balance right on TTIP and that the ongoing negotiations will deliver a trade and investment deal which benefits the UK economy, without damaging the NHS or restricting the Government's ability to regulate in the public interest.

*Regards*



**LORD LIVINGSTON  
OF PARKHEAD**