Department
for Business
Innovation & Skills

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Foreign &
Commonwealth
Office

Anna Soubry MP
House of Commons
London
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**Lord Livingston of Parkhead**

Minister of State for
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[redacted]

www.gov.uk/ukti

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16 December 2014

Dear Anna,

Thank you for your letter of 21 November to Vince Cable enclosing correspondence from your constituent, [redacted] about the EU-US Transatlantic Trade and Investment Partnership (TTIP). I am replying as the Minister responsible.

Let me reassure [redacted] 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 jobs, reducing prices and increasing choice for consumers. Independent analysis shows that an ambitious agreement could give an annual boost to the UK 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.

Public services

The European Commission has explicitly ruled out public services from the scope of any market liberalisation in TTIP and it has not therefore been necessary to discuss any exclusions related to specific public services. 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:
trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152665.pdf

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 at:

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

Our focus for health in the TTIP negotiations is to enable our world class pharmaceutical and medical devices sectors to benefit from improved access to the US market, increasing growth and employment in the UK.

Investor Protection and Investor-State Dispute Settlement (ISDS)

[redacted] raises a specific concern that TTIP would prevent health services run by private providers being taken back into the public sector, because the companies concerned could take tribunal cases against the government. This is a reference to possible investment protection and investor-state dispute settlement (ISDS) provisions that may be included in TTIP. I can reassure [redacted] that the inclusion of such provisions in TTIP will not prevent a future Government from changing the legal framework for the provision of NHS services or terminating the private provision of such a service in accordance with the law or contracts entered into as is the case today.

Let me clarify what investment protection provisions in investment treaties offer investors and what actions ISDS tribunals can take. Investment protection provisions protect overseas investors from discrimination and unfair treatment. These provisions can help to create a positive investment climate, one of the key drivers of growth. ISDS provisions provide a mechanism for international investors to seek legal redress if they think the investment protection provisions in a treaty have been breached. We would oppose unfair or discriminatory action by a state against UK investors abroad and are simply offering similar guarantees to foreign investors here.

However, ISDS tribunals cannot override Parliament, strike down or overturn laws. They can only determine whether a state has breached the guarantees set out in a treaty, whether a foreign investor is entitled to compensation and, if so, what amount. The UK already has over 90 bilateral investment treaties with other countries and, to date, there has not been a single successful ISDS case brought against the UK, while many UK investors overseas who have suffered discrimination, expropriation and lack of due legal process have relied on ISDS.

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.

The transparency of ISDS cases is recognised to be an issue. The new UNCITRAL (UN Commission on International Trade Law) *Rules on Transparency in Treaty-based Investor-State Arbitration* address this. 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. Both the EU and US support inclusion of these transparency rules in all future free trade agreements. CETA, for example, fully implements the UNCITRAL standards.

ISDS 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. You can find the investment provisions included in CETA on the European Commission's website at:
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.

Transparency of TTIP negotiations

The UK Government and the European Commission have been working to inform the public about TTIP and to promote its benefits to people and to businesses. The Commission has published numerous position papers giving detailed information about what is being negotiated. The EU negotiating mandate for TTIP is also available on the Commission's website at:
trade.ec.europa.eu/doclib/press/index.cfm?id=1162

There has been, and continues to be, extensive consultation on TTIP. The European Commission consulted publicly on its negotiating priorities and investment protection, and is holding regular meetings with an advisory group, as well as civil society groups throughout the negotiations.

The Department for Business, Innovation & Skills (BIS) also holds regular meetings with organisations representing those with a particular interest in TTIP. These meetings help to inform the Government's approach to the negotiations and include representatives from:

- business representative bodies;
- Which?;
- the Trades Union Congress; and
- non-governmental organisations such as War on Want and Friends of the Earth.

The European Commission has recently announced measures to further improve the transparency of the negotiations which I hope will provide additional reassurance regarding TTIP. More details about these measures to boost TTIP transparency can be found on the Commission's website at: trade.ec.europa.eu/doclib/press/index.cfm?id=1201

Parliament oversees the TTIP negotiations via regular updates from the Government. TTIP was debated in the House of Commons on 18 July 2013 and again on 25 February this year. It is also the subject of an All-Party Parliamentary Group.

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 Gov.UK website at: 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.

Any eventual deal on TTIP will have to be agreed by both the Council of the EU (governments of the EU countries) and the European Parliament, both of which are represented by democratically elected individuals. The UK Parliament will also scrutinise the final draft agreement.

More information

I enclose three leaflets produced by BIS that you may wish to pass on to [redacted]. 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 and the European Commission's website at: ec.europa.eu/trade/policy/in-focus/ttip/

Thank you, again, for passing on your constituent's concerns. I hope this response reassures [redacted] 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, workers and consumers, without damaging the NHS.

Regards

**LORD LIVINGSTON**
**OF PARKHEAD**