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Sir Robert Goodwill MP
Chair, Environment, Food and
Rural Affairs Committee
By email

29 August 2023

Dear Sir Robert,

EFRA Committee on Thames Water

Following my appearance before your committee on 12 July 2023, I am writing to elaborate on two issues raised, where we agreed to provide additional information.

Firstly, Barry Gardiner MP queried whether there is a nationalisation clause in a debt issuance, that would require the Government to pay a sum (referencing a figure of £560m). I understand that Thames Water have written to confirm that there is no such clause in company documentation which would require such a payment to be made. I wanted to confirm that this is consistent with the Government's understanding of the matter. I also wanted to reiterate the point that the Government has powers to place a company into special administration, but that this is not a form of renationalisation. Special administration is a process whereby companies which provide vital public services (e.g., water, rail) can be put into administration with a requirement that the public service will still be provided pending the transfer to new owners. While the special administration order is in force, the affairs, business, and property of the company will be managed by a person appointed by the High Court on the recommendation of Ofwat or Defra pending the transfer of the relevant parts of the company's undertaking to another company or companies.

Secondly, I agreed to write on the matter of private inter-state dispute settlement schemes. Darren Jones MP asked whether, in the context of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), if a foreign shareholder were to lose out financially, they would be able to bring action against the UK Government.

As is standard practice, Government will ensure that any action it takes is compliant with domestic and international law, including its investment treaty commitments. The UK has around 90 treaties in force with ISDS and has never received a successful claim nor has the threat of potential claims affected our legislative programme.

CPTPP provides investors with guarantees on the treatment they will receive when accessing and operating in CPTPP markets. This is backed by a modern, transparent investor-state dispute settlement (ISDS) mechanism to seek independent legal redress should they not receive this treatment, for example if a state treats an investor in an arbitrary or discriminatory manner.

Across all negotiations on investment protections and ISDS provisions, including during our accession to CPTPP, we have been clear that we will not agree to anything that hinders our right to regulate in the public interest. This right to regulate is recognised in international law, and CPTPP contains provisions for the states' right to regulate proportionately, fairly and in the public interest. Examples of these provisions include Article 29.2 (Security Exceptions) which provides space to protect national security, Article 9.16 (Investment and Environmental, Health and other Regulatory Objectives) which reaffirms the states' right to regulate, and the National Treatment article in the Investment chapter which includes language that builds in public policy considerations.

I trust this information is helpful to the committee.

Yours sincerely,

REBECCA POW MP