



The Scottish Parliament  
Pàrlamaid na h-Alba

## **European and External Relations Committee**

**2nd Report, 2015 (Session 4)**

# **The implications of the Transatlantic Trade and Investment Partnership for Scotland**

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The Scottish Parliament  
Pàrlamaid na h-Alba

## European and External Relations Committee

### 2nd Report, 2015 (Session 4)

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The Scottish Parliament  
Pàrlamaid na h-Alba

## **European and External Relations Committee**

### **Remit and membership**

#### **Remit:**

The remit of the European and External Relations Committee is to consider and report on-

- (a) proposals for European Union legislation;
- (b) the implementation of European Communities and European Union legislation;
- (c) any European Communities or European Union issue;
- (d) the development and implementation of the Scottish Administration's links with countries and territories outside Scotland, the European Union (and its institutions) and other international organisations; and
- (e) co-ordination of the international activities of the Scottish Administration.

(Standing Orders of the Scottish Parliament, Rule 6.8)

#### **Membership:**

Clare Adamson (23 February 2012 - 27 November 2014)

Roderick Campbell

Willie Coffey

Adam Ingram (27 November 2014-)

Hanzala Malik (Deputy Convener)

Jamie McGrigor

Christina McKelvie (Convener)

Anne McTaggart (8 January 2015-)

Alex Rowley (25 February 2014 - 8 January 2015)

#### **Committee Clerking Team:**

Clerk to the Committee

Katy Orr

Assistant Clerk

Jenny Goldsmith



The Scottish Parliament  
Pàrlamaid na h-Alba

## European and External Relations Committee

### 2nd Report, 2015 (Session 4)

#### The implications of the Transatlantic Trade and Investment Partnership for Scotland

The Committee reports to the Parliament as follows—

#### Background

1. The Transatlantic Trade and Investment Partnership (TTIP) is a trade agreement that is currently being negotiated by the European Commission, on behalf of the European Union (EU), and the United States (US). The negotiations started in July 2013 and it is unclear when – or even if – the negotiations will be concluded and, even if there is an agreement, it will be many years before its impact felt. However, the negotiations have been given a renewed political impetus under the new European Commission, which has identified a “Reasonable and Balanced Free Trade Agreement with the U.S” as one of its ten priorities for their term of office. As the negotiations are still in progress at the time of publication of this report, the Committee has agreed to continue to monitor developments in relation to TTIP. This report therefore only represents our conclusions in March 2015 following a series of evidence sessions, and we intend to actively consider the potential impacts of TTIP on Scotland as the negotiations unfold.

2. During the course of 2014, public concern began to mount in many countries in the EU about the implications of TTIP. In Scotland, specific concerns were expressed about the impact of TTIP in the areas of health and public services, education, agriculture, the environment and climate change. As policies in many of these areas have diverged significantly from the rest of the UK since devolution, it seemed important to consider the specific implications for Scotland of TTIP. In addition, the lack of any rigorous assessment of the impact of a trade agreement on the Scottish economy raised questions about the extent to which Scotland would actually benefit from improved access to the US market. As members of the Scottish Parliament’s European and External Relations Committee, we believed it was important to explore the implications of TTIP for Scotland, and, in November 2014 we set about the process of asking stakeholders and those engaged on the subject to provide us with evidence on TTIP. The following section sets out the key conclusions from this inquiry.

## KEY CONCLUSIONS AND RECOMMENDATIONS

### **The process for agreeing the Transatlantic Trade and Investment Partnership**

3. The Committee recognises and understands the significant degree of public concern that has been expressed in relation to various aspects of the proposed TTIP with the United States. While we acknowledge that in any negotiation it is important to retain a degree of discretion about negotiating positions, the secrecy involved – particularly in the early stages of the negotiation – has contributed to significant public distrust in the agreement.<sup>1</sup>

4. The Committee therefore welcomes the publication of key documents and background information on the negotiations by Commissioner Malmström since she took up the post of Trade Commissioner. However, in light of the lack of clarity in relation to particular proposals – notably with regards to public services – and continuing public concerns, we call on the European Commission to make as much information as possible available during the remaining course of the negotiations.

5. The Committee recognises that neither the Scottish Parliament nor the Scottish Government has a formal role either in the negotiations or eventual ratification of the agreement. The Committee is also aware that the Scottish Government is primarily dependent on intergovernmental contact with the UK Government to understand the potential impact of what is being negotiated under TTIP in devolved policy areas, particularly where there has been significant policy divergence since devolution. We believe that where issues of such importance for Scotland are at stake, it is crucial that there are strong mechanisms and structures to ensure that the Scottish Government is consulted and kept informed of developments of relevance to devolved policy areas.

6. The Committee is aware that the European Commission will, in future years, conduct further trade negotiations with a view to reaching agreement with other third parties. The Committee calls on the European Commission to conduct these negotiations with a high degree of transparency to ensure public confidence is maintained in relation to the process of concluding agreements.

### **The economics of TTIP**

7. The Committee recognises that the US is an important export market for Scotland, based both on existing figures and the potential for further growth. It believes that trade liberalisation could be significant for a number of sectors in Scotland and could promote economic growth. The Committee also recognises that the Transatlantic Trade and Investment Partnership could result in increased inward investment from the US in the future. However, we have reservations about some of the assumptions relating to economic growth that have been used in support of the agreement. We

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<sup>1</sup> Hanzala Malik MSP and Anne MacTaggart MSP dissented from this sentence.

consider, in light of the evidence heard, that while there are likely to be some positive outcomes from the agreement, there may also be some sectors that contract in the face of increased competition with a negative consequential effect on employment.

8. The Committee welcomes the commitment of the Scottish Government and the enterprise agencies to conduct further research into the impact of the agreement on the key economic sectors in Scotland, and calls on the Scottish Government to keep it informed of this work. In particular, if or when an agreement is eventually reached, the Committee asks the Scottish Government to carry out a more detailed economic impact assessment covering both GDP growth and the impact on key sectors in Scotland in order that this information can be provided to businesses in Scotland and provision made to mitigate any economic contraction and job losses.

9. The Committee was surprised by the lack of knowledge, understanding or engagement of some business organisations in Scotland on TTIP. It considers that it is important for business organisations to understand the implications of a trade agreement with the US and encourages the UK Government, the Scottish Government and the enterprise agencies to raise awareness of TTIP among the business community.

#### **Improved regulatory coherence**

10. The Committee recognises that improved regulatory coherence could help reduce the “red tape” that Scottish businesses face in exporting to the US market, for example by reducing “double” safety testing in both the EU and the US. However, it heard strong concerns that the agreement might result in a lowering of regulatory standards in important areas such as the environment, food production and quality, and animal husbandry. While we acknowledge that the UK Government and the European Commission have made clear statements that regulatory standards will not be affected, we also believe that in the absence of any final text on regulatory standards, there are no cast iron guarantees that regulatory standards will not be negatively impacted by the agreement and the public will not be reassured.

#### **Food protection names**

11. The Committee notes the assurances that TTIP will not result in a less favourable position for protected food names, but calls on the UK Government to press in this area for the protection of Scotland’s unique food products.

#### **Investment Protection and Investor-to-State Dispute Settlement (ISDS)**

12. The Committee remains unconvinced of the need for an investor-to-state dispute settlement mechanism to protect against discriminative action against EU companies in the US or US companies in the EU. Furthermore, we believe that genuine and well-founded concerns were presented to us in evidence about the risks of national court systems being bypassed by major

corporations. Therefore, we believe that any disputes should be resolved in accordance with the legal systems and processes of the country concerned.

13. The Committee will continue to monitor developments in relation to ISDS, particularly the European Commission's decision in April-May 2015 on whether there should be an ISDS mechanism, and if there is, the form that it will take.

#### **Impact of TTIP on public services**

14. The protection of public services in Scotland, particularly NHS Scotland, was a key concern of those giving evidence to the Committee. The Committee heard from the UK Government and the European Commission that public and health services were not at risk from the agreement. However, we remain concerned about the definitions of public services and whether the reservations contained in the final agreement would protect the full range of public services that are delivered in Scotland. The Committee will therefore continue to monitor any developments in relation to whether definitions of public services in the TTIP agreement, particularly where they draw on the model contained in the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada, fully cover the provision of public services in Scotland.

15. The Committee recognises that despite the public statements from the UK Government and the European Commission that there is no risk to public services, the continuing public concern is indicative of a lack of trust in the whole negotiating process. We believe that these concerns have been exacerbated by the failure to make the text – or part of the text – on the reservations public. We consider it regrettable that, for the second time, information that would benefit the understanding of the process for the public has been made available by the leaking of a key European Commission negotiating document on the reservations.

16. The Committee encourages the UK Government and the European Commission to consider the Cabinet Secretary for Finance, Constitution and Economy's suggestion that a "double lock" be developed to secure public trust and confidence in the TTIP negotiations.

#### **General conclusion**

17. The Committee believes that its inquiry work into TTTIP has been very important, even though the Scottish Parliament will have no direct role in ratifying the eventual agreement and the Scottish Government has not direct role in the negotiations. The inquiry has allowed Scottish voices and Scottish concerns to be heard on this issue and, we hope, that by sending this report to the UK Government and the European Commission, that we can raise awareness of those concerns and influence the negotiation of an agreement that is constructive for the people that will live with its consequences.



18. **This inquiry has demonstrated to us how distant people and organisations in Scotland can feel from the decisions that are taken in Brussels. Decisions relating to TTIP have to permeate layers of government: from the European Commission to the UK as the Member State, and from the UK Government to the Scottish Government. Where there are concerns in Scotland, these have to be transmitted back through these layers in the hope that they will be taken into account in the eventual negotiations. We therefore understand the public frustrations and concerns on this issue.**

19. **The Committee believes that Scotland's representatives in the European Parliament and the Committee of the Regions have played an extremely valuable role in raising and addressing Scottish concerns, and we have valued their input to this inquiry greatly.**

20. **The conclusions and recommendations set out above represent our initial position in relation to TTIP. As a Committee, we intend to conduct further inquiry work, particularly to explore issues relating to ISDS and public services. In taking more evidence, we will also seek to clarify the effect of the provisions in the CETA with Canada, which are being drawn on as models in the TTIP agreement.**

#### OUR INQUIRY

21. As a Committee we agreed that it was important to assess the relative opportunities and risks of TTIP for the Scottish economy and devolved policy areas. We therefore held two roundtables with a range of stakeholders—

- On 27 November 2014 we heard from third sector organisations and trade unions
- On 11 December 2014 we heard from businesses and business organisations.

22. Since the Treaty of Lisbon entered into force, the EU has had exclusive competence on foreign direct investment,<sup>2</sup> allowing it to conclude comprehensive investment agreements. The European Commission is responsible for negotiating international trade agreements on behalf of the Member States. The Commission negotiates on the basis of guidelines agreed by the Council, where the Governments of all EU Member States – including the UK - are represented. In this context, the Committee agreed that we should hear from the following key actors—

- the European Commission Deputy Chief Negotiator, Mr Hiddo Houben (15 January 2015);
- the Deputy First Minister of Scotland and Cabinet Secretary for Finance, Constitution and the Economy, Mr John Swinney MSP (5 February 2015); and

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<sup>2</sup> Article 207 of the Treaty on the Functioning of the European Union (consolidated version 2012). Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT> [Accessed March 2015].

- the UK Minister of State for Trade and Investment, Lord Livingston (19 February 2015).

23. During the course of this inquiry we heard a considerable amount of evidence, as well as receiving a number of written submissions, all of which has contributed to this report.<sup>3</sup>

### **Why is a trade agreement being negotiated with the US?**

24. The EU has concluded trade agreements with around 50 different international partners. These agreements include, most recently, the Comprehensive Trade and Economic Agreement (CETA) with Canada, which took five years to negotiate.

25. The negotiating mandate for TTIP states that—

“The objective of the Agreement is to increase trade and investment between the EU and the US by realising the untapped potential of a truly transatlantic market place, generating new economic opportunities for the creation of jobs and growth through increased market access and greater regulatory compatibility and setting the path for global standards.”<sup>4</sup>

26. Specifically, the TTIP will have three main elements—

- “Market access: removing customs duties and restrictions on services, gaining better access to public markets, and making it easier to invest.
- Improved regulatory coherence and cooperation by dismantling unnecessary regulatory barriers such as Bureaucratic duplication of effort
- Improved cooperation when it comes to setting international standards.”<sup>5</sup>

27. When giving evidence to the Committee, the European Commission’s Deputy Chief Negotiator emphasised the common interest of the EU and USA in promoting trade in the context of the growing competitive challenge posed by Asia. He stated—

“We both need growth—America needs growth as much as we do. We both need competitiveness because we are facing huge competitive challenge from Asia and that will remain in the next 10 to 15 years.”<sup>6</sup>

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<sup>3</sup> The Committee would like to thank all of those who submitted written evidence or gave oral evidence. Annexe B contains a list of witnesses and the written submissions received.

<sup>4</sup> Council of the European Union (9 October 2014). *Directives for the negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America* [Accessed March 2015]. Available at: <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf> [Accessed March 2015].

<sup>5</sup> European Commission (2015). *TTIP explained*. Available at: [http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc\\_152462.pdf](http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc_152462.pdf) [Accessed March 2015].

<sup>6</sup> Scottish Parliament European and External Relations Committee. *Official Report, 15 January 2015*, Col. 4.

28. In their written evidence, David Martin MEP and Catherine Stihler MEP drew attention to the importance of the agreement not only in terms of the potential growth that might result from it for the EU, but also in terms of the changing geopolitical landscape and the global standards that could be set through TTIP. They explained that “TTIP has been launched not only as a potential kick-start to the European economy, where we must trade our way out of the crisis, but also in the face of the rise of the BRICS [Brazil, Russia, India, China and South Africa], China in particular.”<sup>7</sup> They also underlined that “TTIP would create the world’s largest trading area and in doing so, begin to set global standards”.<sup>8</sup>

29. In evidence to the Committee, David Williamson of the Scotch Whisky Association explained that as whisky exports already benefited from a zero tariff, that “TTIP was a much wider strategic issue”<sup>9</sup> for his industry. He argued that the standards set in TTIP could be of value for the Scotch Whisky Industry in that they would “set a benchmark that other trade agreements would have to reach”.<sup>10</sup> Thus, a TTIP agreement could have future beneficial effects through its replication in trade agreements with other partners.

### **How will agreement be reached on TTIP?**

#### *The negotiating process*

30. The Member States agreed a negotiating mandate for the European Commission unanimously at a Council of Ministers meeting on 14 June 2013.<sup>11</sup> In evidence to the Committee, the European Commission’s Deputy Chief Negotiator explained the process—

“Our general modus operandi is that we engage in the negotiations on the basis of a mandate that we have received from member states via the Council. At the end, when we have a product, we submit that for approval to the European Parliament and to our member states in the Council. The lawyers then look at what is in the agreement and determine whether European law provides that it needs to be adopted only at the European level or whether it needs to be adopted by the individual Parliaments of the 28 member states.”<sup>12</sup>

31. The European Commission and US negotiating teams meet every few weeks in a series of rounds of negotiations. It is envisaged that the final agreement will have 24 chapters grouped under the three headings of market access, regulatory

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<sup>7</sup> David Martin MEP and Catherine Stihler MEP. Written submission.

<sup>8</sup> David Martin MEP and Catherine Stihler MEP. Written submission.

<sup>9</sup> Scottish Parliament European and External Relations Committee. *Official Report*, 11 December 2014, Col. 11.

<sup>10</sup> Scottish Parliament European and External Relations Committee. *Official Report*, 11 December 2014, Col. 19.

<sup>11</sup> The mandate was made public in October 2014 after significant public pressure was placed on the European Commission. Council of the European Union (9 October 2014). *Directives for the negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America* [Accessed March 2015]. Available at: <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf> [Accessed March 2015].

<sup>12</sup> Scottish Parliament European and External Relations Committee. *Official Report*, 15 January 2015, Col. 11.

cooperation, and rules. At the time of publishing this report (March 2015), the eighth round of negotiations has just been initiated with the US. The European Commission's Deputy Chief Negotiator told the Committee that the European Commission hoped to be able to conclude the negotiations under the Obama Administration, that is, by the end of 2016.

32. In terms of its engagement with the other EU institutions, the European Commission has a legal obligation to consult the Council on all aspects of the negotiations, and has held a series of meetings with Member States both in the Council and on a bilateral level. In addition, the European Parliament's Committee on International Trade and a Monitoring Group of MEPs are also actively engaged in scrutinising the negotiations for TTIP, with the European Commission presenting information to the International Trade Committee on a regular basis.

### *Transparency*

33. The Committee believes that much of the concern about TTIP has arisen as a result of the lack of public transparency that has traditionally surrounded trade negotiations until the final agreement has been reached. A number of issues relating to transparency were raised in evidence to the Committee. For example, the STUC stated that "the secrecy surrounding the negotiations is unacceptable and likely to undermine trust in both trade policy and the EU institutions responsible for directing it."<sup>13</sup> Similarly, David Anderson of the University and College Union said that, "the secrecy, including the secret negotiating positions, and the lack of public engagement and involvement in the whole process have set alarm bells ringing."<sup>14</sup>

34. The European Movement in Scotland (EMiS) recognised that the TTIP negotiations "have faced an unprecedented level of public and media interest and become subject to huge public scrutiny."<sup>15</sup> It elaborated—

"Objections regarding the confidentiality of negotiations have also arisen from fears on this side of the Atlantic that the EU is not strong enough to negotiate with the US. In particular, NGOs and CSOs [Civil Society Organisations] fear that an agreement with such a powerful partner could undermine EU standards on environmental protection, labour rights and minimum wages, intellectual data protection and food safety, as American norms and regulations are in many aspects crucially different from European legislation."<sup>16</sup>

35. When Cecilia Malmström took over as the new European Trade Commissioner in late 2014, she responded to repeated calls for more transparency and disclosure by promising greater levels of transparency in relation to the negotiations. Specifically, she committed to—

- "making public more TTIP EU negotiating texts that the Commission shares with Member States and the European Parliament;

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<sup>13</sup> STUC. Written submission.

<sup>14</sup> Scottish Parliament European and External Relations Committee. *Official Report, 27 November 2014*, Col. 25.

<sup>15</sup> European Movement in Scotland. Written submission.

<sup>16</sup> European Movement in Scotland. Written submission.

- “providing access to the EU’s TTIP negotiating texts to all Members of the European Parliament (MEPs), not just a select few, by extending access to EU restricted documents in a 'reading room' to those MEPs who had no access to such restricted documents so far; and;
- “publishing information about who meets its [the European Commission’s] political leaders and senior officials.”<sup>17</sup>

36. In addition, the European Ombudsman – Emily O’Reilly – issued an opinion on 7 January calling for greater public access to consolidated negotiating texts in the TTIP negotiations. The European Commission responded immediately by publishing a number of “textual proposals” which set out EU proposals for legal text in the TTIP. These “set out actual language and binding commitments which the EU would like to see in the parts of the agreement covering regulatory and rules issues.”<sup>18</sup> In addition, the European Commission has published a series of TTIP position papers on a number of key areas in order to provide more information on what is being negotiated.

37. Prior to the formal initiation of the Committee’s inquiry work on TTIP, in November 2014, David Martin MEP highlighted the improvements in relation to transparency that had been made, drawing on his experience as a member of the European Parliament’s Committee on International Trade—

“It was very difficult initially to get good information. That has changed quite dramatically. We now have the negotiating mandate; we now know what the Commission is negotiating on. From the very beginning, after every round of negotiations, the Commission has been coming and reporting to the members of the Committee on International Trade. That has been good for us but rather frustrating because it has been done behind closed doors, in confidence, and we are not meant to go out and talk about the specifics of what we are being told.”<sup>19</sup>

38. Alyn Smith MEP and Ian Hudghton MEP emphasised that, in their view, “matters concerning public policy should be open to public scrutiny and debate”.<sup>20</sup> They welcomed the fact that pressure had resulted in more transparency around the process—

“That the European Commission has finally relented to pressure and offered to make more information relevant to the negotiations public shows how important it is to continue to apply pressure on issues that matter to us. While pleased that we managed to gain this, we still think we can do more and this

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<sup>17</sup> European Commission news release 7 January 2015. Available at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1231> [Accessed March 2015].

<sup>18</sup> European Voice, 7 January 2015. *EU ombudsman calls for greater TTIP transparency*. Available at: [http://www.europeanvoice.com/article/eu-ombudsman-calls-for-greater-ttip-transparency/?utm\\_source=email&utm\\_medium=alert&utm\\_campaign=EU+ombudsman+calls+for+greater+TTIP+transparency](http://www.europeanvoice.com/article/eu-ombudsman-calls-for-greater-ttip-transparency/?utm_source=email&utm_medium=alert&utm_campaign=EU+ombudsman+calls+for+greater+TTIP+transparency) [Accessed March 2015]

<sup>19</sup> Scottish Parliament European and External Relations Committee. *Official Report, 20 November 2014*, Col. 20.

<sup>20</sup> Alyn Smith MEP and Ian Hudghton MEP. Written submission.

illustrates the importance of MEPs remaining engaged with the process in an attempt to improve the quality of the end result.”<sup>21</sup>

*Final agreement of TTIP*

39. The process for finally agreeing TTIP once an agreement has been reached between the European Commission and US trade negotiators will depend on the nature of the final agreement. While it will be for the Council, together with the European Parliament, to examine and approve or reject the final agreement, the European Commission has indicated that it intends to publish the draft text of the final agreement in order to allow a public debate—

“Members of the public have several months to form an opinion regarding the outcome of the negotiations and influence the decision of the European Parliament and the Council in a democratic process. After all, no agreement can be applied without a “yes” from the Member States’ governments and from the Members of the European Parliament.”<sup>22</sup>

40. If the final TTIP agreement is a “mixed” agreement, that is, if it covers policy areas that are a Member State competence, then the national parliaments of the EU’s Member States will also have to approve the agreement in accordance with their own national ratification procedures. In evidence to the Committee, the European Commission’s Deputy Chief Negotiator confirmed that it was likely to be a mixed agreement, suggesting that “the scope and the importance of the agreement probably imply that we can anticipate that it will pass through individual national Parliaments as well as the European Parliament and the Council.”<sup>23</sup>

41. As far as Scotland is concerned, the Cabinet Secretary for Finance, Constitution and Economy set out the position very clearly to the Committee. He said, “neither the Scottish Government nor the Scottish Parliament has any formal role in the negotiation and ratification of international trade or investment agreements such as TTIP.”<sup>24</sup> He described the role of the Scottish Government as being “to represent the people of Scotland and to ensure that the UK, as the member state speaking for Scotland in the European Union, takes full account of Scottish priorities and concerns, whether they are economic or about devolved services such as the national health service.”<sup>25</sup>

42. In response to questioning by the Committee on the extent to which the Scottish Government was able to influence the final agreement, the Cabinet Secretary for Finance, Constitution and Economy emphasised that “De jure, we will not be a signatory to the agreement.”<sup>26</sup> He explained that while the Scottish Government at the ministerial or official level would “not have the ability to finally

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<sup>21</sup> Alyn Smith MEP and Ian Hudghton MEP. Written submission.

<sup>22</sup> European Commission. Available at:

[http://trade.ec.europa.eu/doclib/docs/2013/june/tradoc\\_151381.pdf](http://trade.ec.europa.eu/doclib/docs/2013/june/tradoc_151381.pdf)

<sup>23</sup> Scottish Parliament European and External Relations Committee. *Official Report*, 15 January 2015, Col 12.

<sup>24</sup> Scottish Parliament European and External Relations Committee. *Official Report*, 5 February 2015, Col. 27.

<sup>25</sup> Scottish Parliament European and External Relations Committee. *Official Report*, 5 February 2015, Col 27.

<sup>26</sup> Scottish Parliament European and External Relations Committee. *Official Report*, 5 February 2015, Col. 34.

control and determine its outcome”, it was “making the strongest possible representations to the United Kingdom Government, which will be involved in the process, to ensure that there is the widest understanding and acceptance of Scotland’s interests in the UK negotiating position.”<sup>27</sup>

**43. The Committee recognises and understands the significant degree of public concern that has been expressed in relation to various aspects of the proposed TTIP with the United States. While we acknowledge that in any negotiation it is important to retain a degree of discretion about negotiating positions, the secrecy involved – particularly in the early stages of the negotiation – has contributed to significant public distrust in the agreement.<sup>28</sup>**

**44. The Committee therefore welcomes the publication of key documents and background information on the negotiations by Commissioner Malmström since she took up the post of Trade Commissioner. However, in light of the lack of clarity in relation to particular proposals – notably with regards to public services – and continuing public concerns, we call on the European Commission to make as much information as possible available during the remaining course of the negotiations.**

**45. The Committee recognises that neither the Scottish Parliament nor the Scottish Government has a formal role either in the negotiations or eventual ratification of the agreement. The Committee is also aware that the Scottish Government is primarily dependent on intergovernmental contact with the UK Government to understand the potential impact of what is being negotiated under TTIP in devolved policy areas, particularly where there has been significant policy divergence since devolution. We believe that where issues of such importance for Scotland are at stake, it is crucial that there are strong mechanisms and structures to ensure that the Scottish Government is consulted and kept informed of developments of relevance to devolved policy areas.**

**46. The Committee is aware that the European Commission will, in future years, conduct further trade negotiations with a view to reaching agreement with other third parties. The Committee calls on the European Commission to conduct these negotiations with a high degree of transparency to ensure public confidence is maintained in relation to the process of concluding agreements.**

### **The economics of TTIP**

*How important is the USA as an export market to Scotland?*

**47. Given that promoting access to US markets has been presented by the European Commission as a key reason for agreeing a free trade agreement with the US, the Committee explored the extent to which TTIP might prove economically beneficial, or otherwise, for Scotland.**

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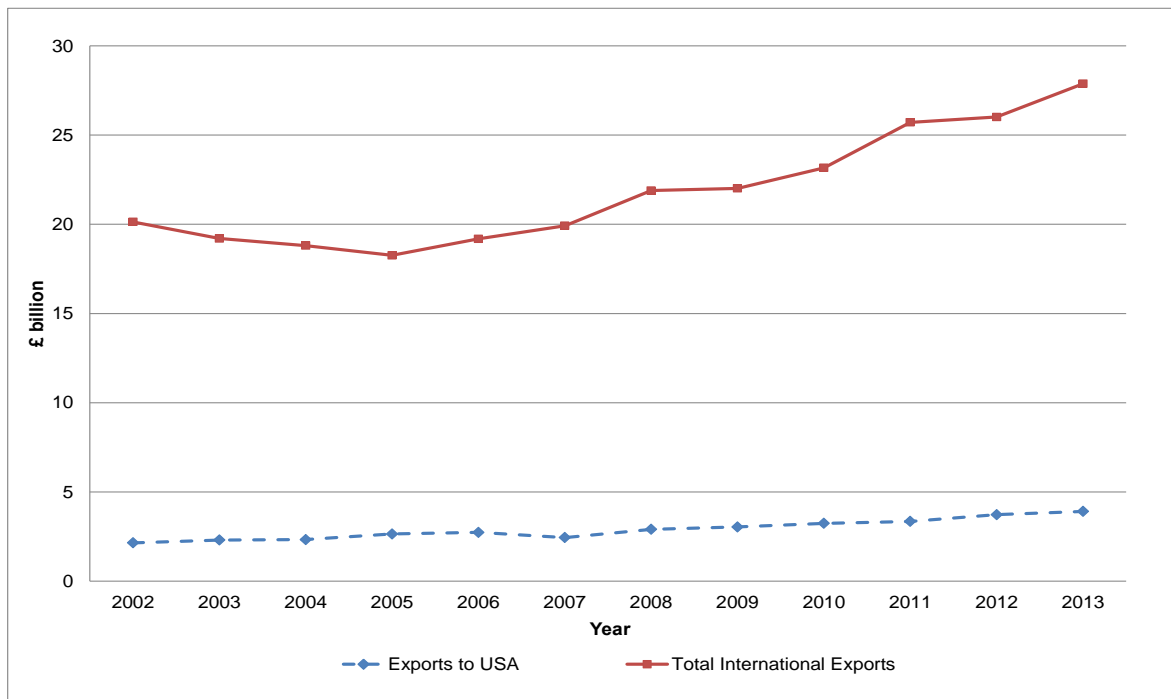
<sup>27</sup> Scottish Parliament European and External Relations Committee. *Official Report, 5 February 2015*, Col 34.

<sup>28</sup> Hanzala Malik MSP and Anne MacTaggart MSP dissented from this sentence.

48. The Scottish Government provided the Committee with evidence from the 2013 Global Connections Survey which indicated that the USA continued to be Scotland's most important international export market, with exports of goods and services to the USA totalling £3.9 billion, equivalent to 14% of Scotland's total £27.9 billion of international exports.<sup>29</sup>

49. The Scottish Government also provided evidence of the increase in the nominal value of exports to the US from £2.2 billion in 2002 to £3.9 billion in 2013, and the relative value of exports to the US as a share of total international exports, which is set out in the chart below.<sup>30</sup>

**Scotland Exports: Value of total International Exports compared with exports to the USA (£billion)**



Source: Scottish Government

50. In addition, the Cabinet Secretary for Finance, Constitution and Economy stated that “with 580 companies employing 980,000 people, the US is our largest investor.”<sup>31</sup> Allan Hogarth of the Scottish North American Business Council (SNABC) suggested that many of those companies used Scotland as “a base to access the entire EU market.”<sup>32</sup> Furthermore, John Crawford of Scottish Enterprise provided evidence indicating that level of US investment in Scotland, and that US investment levels in Scotland was significantly higher than the figure for the UK as a whole as 40 per cent of investment in Scotland is from the US, compared to an overall UK figure of 26 per cent. He illustrated the impact of that US investment on jobs in Scotland, stating that—

<sup>29</sup> Scottish Government. Written submission.

<sup>30</sup> The Scottish Government. Written submission.

<sup>31</sup> Scottish Parliament European and External Relations Committee. *Official Report*, 5 February 2015, Col. 28.

<sup>32</sup> Scottish North American Business Council. Written submission.



“... Scottish Development International has helped to secure more than 13,500 jobs from US companies over the past five years. We also have major employers such as Amazon, which employs 3,000 people across four sites in Scotland. Morgan Stanley, which I mentioned earlier, employs 1,200 people in Glasgow and Hewlett-Packard employs 1,400 people in Erskine, so US investment is incredibly important.”<sup>33</sup>

51. The Scottish Government also provided the Committee with information on Scottish exports to the USA by broad industry group. The table below shows that business services and finance; food and drink; and metals, metal goods and mechanical engineering are the sectors which export the most to the US from Scotland.

**Scotland’s exports to the US by Broad industry Group**

Industry Groupings using SIC 2007	Exports to USA		Total International Exports	
	Exports £ million	% of all exports	Exports £ million	% of all exports
Business Services <sup>3,5</sup> & Finance	910	23	5,100	18
Chemicals and Mineral Products, Rubber and	175	4	4,660	17
Electrical and Instrument Engineering <sup>6</sup>	395	10	3,780	14
Manufacture of Food & Drink	875	22	5,015	18
Metals, Metal Goods, Mechanical Engineer	775	20	1,790	6
Other Manufacturing <sup>7</sup>	145	4	1,535	6
Other Services <sup>3,8</sup>	355	9	2,510	9
Primary Industries <sup>1</sup> & Construction & Utilities	60	2	1,860	7
Wholesale <sup>4</sup> & Retail, Hotels & Restaurants	220	6	1,625	6
<b>TOTALS</b>	<b>3,910</b>	<b>100</b>	<b>27,875</b>	<b>100</b>

Source: Scottish Government

52. The Committee would have valued the opportunity to hear evidence on the significance of TTIP to the United States, and regrets that the US Embassy in the UK was unable to field a witness during the inquiry as it would have been beneficial to have also had a US perspective.

*The economic modelling used in relation to TTIP*

53. The United Kingdom Government has emphasised the potential economic benefits it believes could be achieved from any deal, highlighting the outcome of the research it commissioned from the Centre for Economic Policy Research<sup>34</sup> which suggested that there could be significant gains. The report stated that, “In the long run, UK national income could rise by between £4 billion and £10 billion

<sup>33</sup> Scottish Parliament European and External Relations Committee. *Official Report*, 11 December 2014, Col. 28.

<sup>34</sup> Centre for Economic Policy Research, London (2013). Estimating the Economic Impact on the UK of a Transatlantic Trade and Investment Partnership Agreement between the European Union and the United States. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/198115/bis-13-869-economic-impact-on-uk-of-tranatlantic-trade-and-investment-partnership-between-eu-and-us.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/198115/bis-13-869-economic-impact-on-uk-of-tranatlantic-trade-and-investment-partnership-between-eu-and-us.pdf) [Accessed March 2015].

annually, with the main gains being generated by the liberalisation of non-tariff barriers.”<sup>35</sup>

54. Hiddo Houben, the European Commission Deputy Chief Negotiator, told the Committee that the “economic modelling suggests that there would be an increase in both trade and in reciprocal foreign investment”<sup>36</sup> as a result of a trade agreement with the US.<sup>37</sup> However, he also recognised that “there always costs to liberalisation, but it helps people to compete and protects them over the longer term, because it enables them to have a very strong knowledge base and a competitive economy, which we have in Europe.”<sup>38</sup>

55. From other witnesses, the Committee heard contrasting views about the potential economic benefits of TTIP. Some cast doubt on the predicted economic benefits of any TTIP agreement, questioning the Centre for Economic Policy Research report cited by the European Commission in support of the economic benefits of TTIP.<sup>39</sup> For example, Liz Murray of the World Development Movement told the Committee that the, “UK Government has used the figures on growth and jobs that came from that impact assessment, which contains some assumptions that do not relate very well to the real world. For example, it assumes that markets are perfectly competitive, efficient and in equilibrium.”<sup>40</sup> She also argued that the model relied on “optimistic assumptions about reducing tariffs and non-tariff barriers.”<sup>41</sup>

56. Stephen Boyd from the STUC also questioned the robustness of the research, arguing that even if the model was correct, it would “imply an annual increment in GDP of about 0.03 per cent” and that it would therefore “never be possible to present data that will prove that TTIP has had a positive impact on growth and jobs, because the predicted annual increment is so small that it will be lost in the rest of the data.”<sup>42</sup> He also criticised the economic orthodoxy as being “far too relaxed about assuming the benefits from any gains to trade”.<sup>43</sup> He argued that—

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<sup>35</sup> Department for Business, Innovation and Skills (2013). *Trade and investment agreement between EU and USA: estimated impact on UK*. Available at: <https://www.gov.uk/government/publications/trade-and-investment-agreement-between-eu-and-usa-estimated-impact-on-uk>. [Accessed March 2015].

<sup>36</sup> Scottish Parliament European and External Relations Committee. *Official Report, 15 January 2015*, Col. 14.

<sup>37</sup> Scottish Parliament European and External Relations Committee. *Official Report, 15 January 2015*, Col. 14.

<sup>38</sup> Scottish Parliament European and External Relations Committee. *Official Report, 5 February 2015*, Col. 14.

<sup>39</sup> Centre for Economic Policy Research (2013). *Reducing Transatlantic Barriers to Trade and Investment: An Economic Assessment*. Available at: [http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc\\_150737.pdf](http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf) [Accessed March 2015].

<sup>40</sup> Scottish Parliament European and External Relations Committee. *Official Report, 27 November 2014*, Col. 21.

<sup>41</sup> Scottish Parliament European and External Relations Committee. *Official Report, 27 November 2014*, Col. 21.

<sup>42</sup> Scottish Parliament European and External Relations Committee. *Official Report, 27 November 2014*, Col. 23.

<sup>43</sup> Scottish Parliament European and External Relations Committee. *Official Report, 27 November 2014*, Col. 10.

“Even some of the models that have been used to promote economic benefits have clearly shown that there will be job losses as a result of TTIP and, again, the evidence shows that the people who are displaced are very unlikely to get jobs in the future that pay them at similar rates or employ them at a similar skill level. You might be able to argue that the economy as a whole will benefit in the future, but the fact is that there will be big distributional impacts. If we are all as concerned about inequality as we proclaim to be at this time, we must understand that trade agreements have a major impact in that respect.”<sup>44</sup>

57. Similarly, the World Development Movement expressed a concern about the impact of the trade agreement on employment and social equality, and referred the Committee to an alternative assessment of TTIP conducted by Tufts University. This research concluded—

“TTIP would lead to net losses in net exports after a decade, compared with the baseline without TTIP, and that it would lead to net losses in gross domestic product, a loss of labour income and 600,000 job losses across the EU. Quite significantly from a trade union point of view, it would lead to a reduction in labour’s share of GDP—there would be a movement of the share of GDP from labour to capital. That is an important consideration from the point of view of social equality.”<sup>45</sup>

58. While the Cabinet Secretary for Finance, Constitution and Economy recognised that TTIP could “provide market access for Scottish goods and services and reduce non-tariff barriers”, the liberalisation of markets “does not always mean that business activity is convenient for our side of the argument.”<sup>46</sup> He acknowledged to the Committee that TTIP “can open up our markets here in the same way as it opens up markets to which we hope to gain access.”<sup>47</sup>

59. The Committee pursued the question of the extent to which the loss of market share in certain sectors as a result of increased competition would impact on employment with Lord Livingston - the UK Minister of State for Trade and investment. He argued that while there would be an initial shift, it would “be very small in relationship to the totality”.<sup>48</sup> He concluded that “It comes down to the general question of whether you believe that free trade, particularly between developed countries but also more generally, enhances overall prosperity.”<sup>49</sup>

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<sup>44</sup> Scottish Parliament European and External Relations Committee. *Official Report, 27 November 2014*, Col. 10.

<sup>45</sup> Scottish Parliament European and External Relations Committee. *Official Report, 27 November 2014*, Col. 22.

<sup>46</sup> Scottish Parliament European and External Relations Committee. *Official Report, 5 February 2015*, Col. 28.

<sup>47</sup> Scottish Parliament European and External Relations Committee. *Official Report, 5 February 2015*, Col. 28.

<sup>48</sup> Scottish Parliament European and External Relations Committee. *Official Report, 19 February 2015*, Col. 32.

<sup>49</sup> Scottish Parliament European and External Relations Committee. *Official Report, 19 February 2015*, Col. 32.

*Economic benefits of TTIP in Scotland*

60. The Committee sought evidence from witnesses on the specific economic impacts in Scotland. It questioned Scottish Enterprise on whether it had conducted any assessment of the economic impact on the key sectors of the Scottish economy. John Crawford of Scottish Enterprise responded that—

“There will obviously be implications for sectors and companies on both sides. There are opportunities for trading out and making investments, but Scottish products and companies might well face more competition as our market opens up to US products and services. Neither Scottish Enterprise nor Highlands and Islands Enterprise has done any analysis of the net impact on jobs, and we might want to undertake such work as TTIP plays out.”<sup>50</sup>

61. The Cabinet Secretary for Finance, Constitution and Economy told the European and External Relations Committee that the Scottish Government had undertaken some early modelling on the possible impact of TTIP using its computable general equilibrium of Scotland. He said that the modelling suggested that—

“the impact could mean that Scotland’s gross domestic product expands by 0.2 to 0.3 per cent of GDP. We estimate the range of export growth at between 1.8 and 3.6 per cent, but the range of import growth is expected to be between 0.8 and 1.5 per cent. That illustrates my point about the agreement not being a one-way street.”<sup>51</sup>

62. The Cabinet Secretary for Finance, Constitution and Economy also elaborated on the sectors that might be expected to benefit the most in Scotland from TTIP—

“The expectation is that sectors such as food and drink might benefit—currently, Scottish producers face restrictions on imports into the United States, particularly of lamb products. There might be opportunities in the energy sector. The lifting of restrictions on exports from the United States of crude oil and the associated impacts on downstream activity might be beneficial in that sector, but that is one area in which we could be exposed to as much internal impact in Scotland through the opening up of markets as we might gain from external markets.”<sup>52</sup>

*The elimination of tariffs*

63. As already noted, the elimination of import tariffs has been identified as a key benefit of TTIP. While many import tariffs are already quite low for EU products entering the US market, the volume of trade results in high levels of duties being paid. The benefits of eliminating tariffs were emphasised by CBI Scotland which stated that “given the sheer size of the trade flows between the UK and US, as well as the rising amount of intra-firm trade, the UK economy will significantly gain

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<sup>50</sup> Scottish Parliament European and External Relations Committee. *Official Report, 11 December 2014*, Col 17.

<sup>51</sup> Scottish Parliament European and External Relations Committee. *Official Report, 5 February 2015*, Col. 32.

<sup>52</sup> Scottish Parliament European and External Relations Committee. *Official Report, 5 February 2015*, Col 33.

if all remaining tariffs are eliminated.”<sup>53</sup> SNABC made a similar point and provided further detail on the variation on tariffs to the Committee—

“Trade barriers between the EU and the US are sometimes referred to as being small, averaging around 3%. However, British companies still pay \$1 billion to the US in tariffs every year. For some industries, these tariffs are particularly high. For example, US tariffs on UK sportswear are 32%, for synthetic women’s coats 16%, hotel tableware 28%, and slippers 26%. Tariff elimination between the EU and the US has been estimated cumulatively to be worth 1-3% of each side’s GDP. Even if an as yet undetermined part of that came to be attained, companies would benefit from it.”<sup>54</sup>

64. David Breckenridge of the Scottish Textile and Leather Association explained that due to the problems posed by current tariff barriers, TTIP would be very beneficial for the industry that he represented, which was “very much behind the need for such a transatlantic trade agreement.”<sup>55</sup> He stated—

“The situation is really confused. Some products attract one level of tariff and others attract a much higher or lower level of tariff, which is extremely confusing. Furthermore, there is not a level playing field, because there are countries outwith the EU that have zero tariffs on their goods that go to the United States. We are competing directly with them, but we are competing very much at a disadvantage because those goods usually come from low-cost countries, the tariff rate is zero and we pay perhaps 14 per cent or more on some goods. That is a serious issue for us.”<sup>56</sup>

65. In addition to the savings resulting from the elimination of tariffs, evidence also indicated that TTIP would result in savings from the costs of border fees. David Williamson of the Scotch Whisky Association stated that it had assessed that “if the remaining customs border fees that are applicable to our industry are removed, it would save the industry about £4 million a year.”<sup>57</sup> Similarly, David Breckenridge of the Scottish Textile and Leather Association explained the impact of the need to employ a broker on his industry—

“Having to employ a broker to ensure that goods are taken through customs in the United States adds a huge cost—it can add around 20 per cent to the cost of products. That comes about because the United States is—it seems to us from the outside—an incredibly bureaucratic country in many ways. That is certainly the case when it comes to customs regulations. Getting our goods into the United States can be a headache.”<sup>58</sup>

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<sup>53</sup> CBI Scotland. Written submission

<sup>54</sup> Scottish North American Business Council. Written submission.

<sup>55</sup> Scottish Parliament European and External Relations Committee. *Official Report, 11 December 2014*, Col. 13.

<sup>56</sup> Scottish Parliament European and External Relations Committee. *Official Report, 11 December 2014*, Cols 13-14

<sup>57</sup> Scottish Parliament European and External Relations Committee. *Official Report, 11 December 2014*, Col. 24.

<sup>58</sup> Scottish Parliament European and External Relations Committee. *Official Report, 11 December 2014*, Col 14.

66. **The Committee recognises that the US is an important export market for Scotland, based both on existing figures and the potential for further growth. It believes that trade liberalisation could be significant for a number of sectors in Scotland and could promote economic growth. The Committee also recognises that TTIP could result in increased inward investment from the US in the future. However, we have reservations about some of the assumptions relating to economic growth that have been used in support of the agreement. We consider, in light of the evidence heard, that while there are likely to be some positive outcomes from the agreement, there may also be some sectors that contract in the face of increased competition with a negative consequential effect on employment.**

67. **The Committee welcomes the commitment of the Scottish Government and the enterprise agencies to conduct further research into the impact of the agreement on the key economic sectors in Scotland, and calls on the Scottish Government to keep it informed of this work. In particular, if or when an agreement is eventually reached, the Committee asks the Scottish Government to carry out a more detailed economic impact assessment covering both GDP growth and the impact on key sectors in Scotland in order that this information can be provided to businesses in Scotland and provision made to mitigate any economic contraction and job losses.**

68. **The Committee was surprised by the lack of knowledge, understanding or engagement of some business organisations in Scotland on TTIP. It considers that it is important for business organisations to understand the implications of a trade agreement with the US and encourages the UK Government, the Scottish Government and the enterprise agencies to raise awareness of TTIP among the business community.**

### **Improved regulatory coherence**

69. As noted earlier in this report, improving regulatory coherence and cooperation by dismantling unnecessary regulatory barriers is a key aim of TTIP. The negotiating mandate for TTIP states that the agreement—

“...will aim at removing unnecessary obstacles to trade and investment, including existing NTBs [non-tariff barriers], through effective and efficient mechanisms, by reaching an ambitious level of regulatory compatibility for goods and services, including through mutual recognition, harmonisation and through enhanced cooperation between regulators. Regulatory compatibility shall be without prejudice to the right to regulate in accordance with the level of health, safety, consumer, labour and environmental protection and cultural diversity that each side deems appropriate, or otherwise meeting regulatory objectives.”<sup>59</sup>

70. The Committee explored both the potential benefits and the potential concerns relating to improved regulatory coherence with the witnesses who gave evidence.

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<sup>59</sup> The key negotiating texts are available on the European Commission's web pages: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230>. [Accessed March 2015].

*Regulatory convergence: potential benefits*

71. David Williamson of the Scotch Whisky Association told the Committee that the “difference in the regulatory approaches between the EU and the US should not be underestimated.”<sup>60</sup> This view was supported by SNABC, which considered that regulatory convergence would be of great benefit to Scottish exporters, particularly SMEs, which currently find the duplication of testing to be prohibitively expensive—

“... it is the regulatory dimension from where 80% of the benefits of the deal are predicted to emanate. What the negotiations should aim to do, in our view, is to find ways of avoiding regulatory duplication and double testing and certification in cases where the EU and the US have compatible standards currently achieved through different means. The aim is to spare companies the added cost of having to comply with regulations that provide the same protection, twice.”<sup>61</sup>

72. Scottish Enterprise reinforced this point by drawing the Committee’s attention to the impact that State-level regulation had on those exporting to the US—

“... although the US is Scotland’s biggest export market and many Scottish SMEs are keen to export there, it is a complex market. There are more than 300 million people and 50 states, each with its own regulatory framework. It is a complex market for a company to get into if it is not aware of the issues, so anything that can help with the journey into that market would be welcome, particularly for Scotland, which has a broad base of SMEs, the vast majority of which have 10 employees or fewer.”<sup>62</sup>

*Regulatory convergence: concerns*

73. The European Commission’s negotiating mandate includes specific reference to environmental protection and labour agreements. It states—

“The Agreement should recognise that sustainable development is an overarching objective of the Parties and that they will aim at ensuring and facilitating respect of international environmental and labour agreements and standards while promoting high levels of protections for the environment, labour and consumers, consistent with the EU acquis and Member States’ legislation. The Agreement should recognise that the Parties will not encourage trade or foreign direct investment by lowering domestic environmental, labour or occupational health and safety legislation and standards, or relaxing core labour standards or policies aimed at protecting cultural diversity.”<sup>63</sup>

74. However, there were significant concerns raised in evidence in relation to regulatory convergence, particularly about the potential for the TTIP to have a

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<sup>60</sup> Scottish Parliament European and External Relations Committee. *Official Report, 11 December 2014*, Col 33.

<sup>61</sup> Scottish North American Business Council. Written submission.

<sup>62</sup> Scottish Parliament European and External Relations Committee. *Official Report, 11 December 2014*, Col. 29.

<sup>63</sup> The key negotiating texts are available on the European Commission’s web pages: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230>. [Accessed March 2015].

detrimental effect on regulatory and environmental standards. This was recognised by Hiddon Houben, the European Commission's Deputy Chief Negotiator, who noted that the question of food standards was one of the most controversial in TTIP. He therefore set out the Commission's position—

“...we are not going to change through TTIP our legislation on, for example, genetically modified food or organisms. We are not going to change our ban on injecting cattle with hormones in order to make them grow more quickly, which is a current practice in the US. None of those practices in the food chain will be up for negotiation in TTIP.”<sup>64</sup>

75. However, Liz Murray of the World Development Movement observed that, as a key aim of TTIP was to facilitate trade by removing differences in standards between the EU and the US, there “are strong concerns that this will lead to the watering down of regulation designed to protect public health, workers, consumers and the environment.”<sup>65</sup> These concerns were also articulated by Scott Walker from the National Farmers Union in Scotland in relation to food and agricultural products. He explained that—

“For many years, the US has challenged the European Union in the World Trade Organization about the standards that we have in place for GM, saying that they are unscientific. In the US, they use growth promoters in their meat products and they say that the ban on such substances in the EU is unscientific, and they also say that the EU ban on chicken washing is unscientific.

From our point of view, the US is constantly challenging those bans, and our concern is that once the TTIP agreement is reached, depending on what is in the final document, there will still be erosion over the course of time, because one of the big gains for the US food producers is to get those products into the European Union. That is where they are going to get big gains.”<sup>66</sup>

76. Lord Livingston, the UK Minister of State for Trade and Investment, remarked that “We often hear that there will be chlorine-washed chicken and hormone-fed beef”, but that the EU had said “repeatedly and consistently—and the Americans know—that that will not happen and that EU food safety rules are EU food safety rules.”<sup>67</sup>

77. Scott Johnstone of the Scottish Lifesciences Association also cast doubt on whether there would be a “race to the bottom”.<sup>68</sup> He argued that his sector was going through some major regulatory uplifts in the regulation of medical devices and in-vitro diagnostics and that “it is unlikely that the European Union will lower

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<sup>64</sup> Scottish Parliament European and External Relations Committee. *Official Report, 15 January 2015*, Col. 18.

<sup>65</sup> World Development Movement. Written submission.

<sup>66</sup> Scottish Parliament European and External Relations Committee. *Official Report, 27 November 2014*, Col. 26.

<sup>67</sup> Scottish Parliament European and External Relations Committee. *Official Report, 19 February 2015*, Col. 33.

<sup>68</sup> Scottish Parliament European and External Relations Committee. *Official Report, 11 December 2014*, Col. 34.



those hurdles.”<sup>69</sup> He argued that, “If anything, US companies will have to raise their game if they want to deal in Scotland.”<sup>70</sup>

78. Richard Dixon from Friends of the Earth Scotland raised the issue of aligning regulatory standards for chemicals—

“If the impact of TTIP was that the US’s chemicals regulation became as good as the European regulation that would be great. That would be a good aspect of TTIP. It would be a great gain for the world and would offer greater protection for people in the States because, even though the EU regime is not perfect, it is still much better than the US one. However, that seems unlikely to happen. As has been mentioned already, we have all these American corporations arguing in the WTO and other fora that chemical protections in the EU are unjustified and that the precautionary principle is unscientific and that, therefore, we cannot ban certain things on that basis.”<sup>71</sup>

79. Hiddo Houben, the European Commission Deputy Chief Negotiator, used chemicals as an example of an area in which TTIP would not result in changes to regulatory standards. He stated that “When our standards are fundamentally different, as they are on how we treat chemicals, for example, TTIP will not bring about change.”<sup>72</sup> He explained—

“In the field of chemicals, Europe has the registration, evaluation, authorisation and restriction of chemicals—REACH—regulation, which provides for the registration of hazardous chemicals, whereas the United States does not. That will not change; the US will not adopt our system and we will not adopt its one.”<sup>73</sup>

80. In evidence to the Committee, the Cabinet Secretary for Finance, Constitution and Economy expressed his support for regulation as it “provides assurance on a lot of areas in which our confidence has been weakened by poor experiences” and that he would not “want TTIP to undermine our ability to assure our citizens that we have proper and effective regulation in place.”<sup>74</sup>

**81. The Committee recognises that improved regulatory coherence could help reduce the “red tape” that Scottish businesses face in exporting to the US market, for example by reducing “double” safety testing in both the EU and the US. However, it heard strong concerns that the agreement might result in a lowering of regulatory standards in important areas such as the environment, food production and quality, and animal husbandry. While we**

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<sup>69</sup> Scottish Parliament European and External Relations Committee. *Official Report*, 11 December 2014, Col. 34.

<sup>70</sup> Scottish Parliament European and External Relations Committee. *Official Report*, 11 December 2014, Col. 34.

<sup>71</sup> Scottish Parliament European and External Relations Committee. *Official Report*, 27 November 2014, Col. 29.

<sup>72</sup> Scottish Parliament European and External Relations Committee. *Official Report*, 15 January 2015, Col 18.

<sup>73</sup> Scottish Parliament European and External Relations Committee. *Official Report*, 15 January 2015, Col 18.

<sup>74</sup> Scottish Parliament European and External Relations Committee. *Official Report*, 5 February 2015, Col 40.

**acknowledge that the UK Government and the European Commission have made clear statements that regulatory standards will not be affected, we also believe that in the absence of any final text on regulatory standards, there are no cast iron guarantees that regulatory standards will not be negatively impacted by the agreement and the public will not be reassured.**

### **Protected food names**

82. When David Martin MEP gave evidence to the Committee he indicated that previous EU trade agreements had sought to protect food names under the EU Protected Food Name Scheme, which highlights regional and traditional foods such as Scotch Lamb and Stornoway Black Pudding. He explained that in the negotiations for the recent EU trade agreements with Canada and Singapore the European Commission had been “robust in insisting on including geographical indicators” and that was “important for a number of Scottish products.”<sup>75</sup>

83. The Cabinet Secretary for Finance, Constitution and Economy told the Committee it would be “a very real mistake if TTIP were to reduce regulatory assurance around food safety standards.”<sup>76</sup> Scott Walker from the National Farmers Union Scotland said that there were potential “negatives” for the agriculture sector in relation to intellectual property. He explained—

“Europe has a unique system of geographical indicators, which in Scotland can be seen in things such as Scotch whisky, Scotch beef and Scotch lamb. The system also goes down to individual products such as Arbroath smokies and Dundee cake, to name but two. However, the US does not recognise our system of geographical indicators, which again brings us back to the competition faced by the sector.”<sup>77</sup>

84. Giving evidence to the Committee, Hiddo Houben addressed the issue of protected food names (which the European Commission refers to as geographic indications) and told the Committee that it was likely that there would be an improvement in the current situation. He said—

“The issue concerns difficulties that your products—and others that have what we in our technical speak in Brussels call geographic indications, such as Parma ham and certain cheeses—have because they are insufficiently protected in America. They are protected there only by the trademark system, whereas, in Europe, we have specific geographic indication protection, which is a higher level of protection. Through TTIP, we are trying to export some of that extra protection. We will not get everything, because

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<sup>75</sup> Scottish Parliament European and External Relations Committee. *Official Report, 20 November 2014*, Col 4.

<sup>76</sup> Scottish Parliament European and External Relations Committee. *Official Report, 5 February 2015*, Col 40.

<sup>77</sup> Scottish Parliament European and External Relations Committee. *Official Report, 27 November 2014*, Col 11.

the Americans do not like it, but we will certainly get an improvement on the situation in the American market compared with the current situation.”<sup>78</sup>

85. Lord Livingston was not optimistic that TTIP would be as successful as the CETA agreement had been with Canada in relation to the protection food names. He said, “I suspect that we might get less in the American agreement than we got with Canada, but there is a big push.”<sup>79</sup>

**86. The Committee notes the assurances that TTIP will not result in a less favourable position for protected food names, but calls on the UK Government to press in this area for the protection of Scotland’s unique food products.**

### **Investment Protection and Investor-to-State Dispute Settlement (ISDS)**

87. Investment protection and the ISDS proposals have become one of the most controversial aspects of the TTIP. ISDS allows investors to bring legal proceedings against foreign governments that are party to the agreement, typically if they believe they have been subject to expropriation or discriminatory treatment in that country. ISDS agreements exist in numerous bilateral trade agreements and provide for proceedings to be brought under international law, rather than in the country concerned. This is perceived as providing greater certainty that an investor’s claim will be adjudicated in an impartial manner. If the government is found to be in breach of its obligations under the agreement, the harmed investor can receive financial compensation or other forms of redress.

88. ISDS mechanisms already exist in a number of European member states own bilateral investment treaties. Hiddo Houben observed that there “is huge controversy around the investment instrument but, if you look around the world, you will see that most of the countries that have these instruments are European member states, including the United Kingdom, France and smaller European Union member states, such as Holland.”<sup>80</sup> He further explained that European countries were the largest users of investment dispute mechanisms and that their use was not restricted to large businesses as about one quarter of cases were launched by SMEs.

89. Allan Hogarth of the SNABC told the Committee that “since 1975, the UK has negotiated 94 bilateral treaties, almost all of which had included ISDS provisions. He further emphasised that while at least 43 ISDS claims had been taken by British companies to protect their investments, no ISDS challenge had ever succeeded against the UK.”<sup>81</sup>

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<sup>78</sup> Scottish Parliament European and External Relations Committee. *Official Report, 15 January 2015*, Col. 19.

<sup>79</sup> Scottish Parliament European and External Relations Committee. *Official Report, 19 February 2015*, Col. 34.

<sup>80</sup> Scottish Parliament European and External Relations Committee. *Official Report, 15 January 2015*, Col. 6.

<sup>81</sup> Scottish Parliament European and External Relations Committee. *Official Report, 11 December 2014*, Cols. 32-33.

*The European Commission's response to public concerns about ISDS*

90. European Movement in Scotland summarised the concerns of consumer and labour groups in relation to ISDS, referring to a perception that ISDS would—

“...herald an undemocratic set-up of the tribunals, bypassing national court-proceedings, and the possible impact on the right of states and other levels of government to regulate. The enforcement of new legal rights is in turn dependent on the financial resources and expertise to mount such cases and there are concerns that an ISDS mechanism would extend litigation culture through the relatively high number of large US companies and impact unevenly on smaller countries within the EU. Precedents in Egypt, Australia and Slovakia have proved worrisome.”<sup>82</sup>

91. The European Commission's negotiating mandate sets out the objectives in relation to investment protection—

“The aim of negotiations on investment will be to negotiate investment liberalisation and protection provisions including areas of mixed competence, such as portfolio investment, property and expropriation aspects, on the basis of the highest levels of liberalisation and highest standards of protection that both Parties have negotiated to date. After prior consultation with Member States and in accordance with the EU Treaties the inclusion of investment protection and investor-to-state dispute settlement (ISDS) will depend on whether a satisfactory solution, meeting the EU interests concerning the issues covered by paragraph 23,<sup>83</sup> is achieved. The matter shall be considered in view of the final balance of the Agreement.”<sup>84</sup>

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<sup>82</sup> European Movement in Scotland. Written submission.

<sup>83</sup> Council of the European Union (9 October 2014). *Directives for the negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America* [Accessed March 2015]. Available at: <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf> [Accessed March 2015]. Paragraph 23 of the negotiating text states—

- “As regards investment protection, the objective of the respective provisions of the agreement should:
- provide for the highest possible level of legal protection and certainty for European investors in the US,
  - provide for the promotion of the European standards of protection which should increase Europe's attractiveness as a destination for foreign investment,
  - provide for a level playing field for investors in the US and in the EU,
  - build upon the Member States' experience and best practice regarding their bilateral investment agreements with third countries,
  - and should be without prejudice to the right of the EU and the Member States to adopt and enforce, in accordance with their respective competences, measures necessary to pursue legitimate public policy objectives such as social, environmental, security, stability of the financial system, public health and safety in a non-discriminatory manner. The Agreement should respect the policies of the EU and its Member States for the promotion and protection of cultural diversity.”

<sup>84</sup> Council of the European Union (9 October 2014). *Directives for the negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America* [Accessed March 2015]. Available at: <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf> [Accessed March 2015].

92. Following the initiation of the negotiations, and in recognition of public concerns about ISDS, the European Commission unilaterally suspended discussions in relation to ISDS in order to launch an online consultation between March and July 2014 on the inclusion of ISDS in TTIP. Specifically, the European Commission was keen to assess whether the “EU’s proposed approach for TTIP achieves the right balance between protecting investors and safeguarding the EU’s right and ability to regulate in the public interest.”<sup>85</sup>

93. The European Commission received a total of nearly 150,000 replies and came to an initial conclusion that—

“On this basis, without prejudice to any other issues, there are in particular four areas where further improvements should be explored:

- the protection of the right to regulate;
- the establishment and functioning of arbitral tribunals;
- the relationship between domestic judicial systems and ISDS;
- the review of ISDS decisions through an appellate mechanism.”<sup>86</sup>

94. In evidence to the Committee, 15 January 2015, Hiddo Houben, the Deputy Chief Negotiator on TTIP for the European Commission indicated that the European Commission planned to “condense” the responses from the consultation into a policy recommendation by April-May 2015 on whether there “should be an investment dispute settlement mechanism and, if so, what kind would be appropriate to negotiate with our American friends.”<sup>87</sup>

#### *ISDS: concerns*

95. A range of concerns emerged in relation to ISDS, notably in relation to the transparency, the legitimacy, the decision-making, the independence and the cost of the mechanism. In addition, witnesses referred to a number of recent cases in which companies had initiated proceedings against governments due to reversals in policy direction.

96. David Martin MEP told the Committee that nine of the 28 EU member states had existing ISDS agreements with the US and that “those agreements are all badly and loosely worded at the moment, which opens them up to attack.”<sup>88</sup> He therefore indicated that part of the EU’s intention was to tighten up provisions in relation to ISDS as had been done in the “deal with Canada that is much more restrictive around what can be sued for.”<sup>89</sup> He stated that, “It is not right that companies should be able to sue for changes in public policy, nor is it right that

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<sup>85</sup> European Commission. Available at: [http://trade.ec.europa.eu/consultations/index.cfm?consul\\_id=179](http://trade.ec.europa.eu/consultations/index.cfm?consul_id=179). [Accessed March 2015]

<sup>86</sup> European Commission. Available at: [http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc\\_153044.pdf](http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153044.pdf) [Accessed March 2013].

<sup>87</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9732#.VL-zj9JSj3c>

<sup>88</sup> Scottish Parliament European and External Relations Committee. *Official Report, 15 January 2015*, Col. 4.

<sup>89</sup> Scottish Parliament European and External Relations Committee. *Official Report, 20 November 2014*, Col. 19.

they should be able to sue for future profit that they think they will lose because of a policy change.”<sup>90</sup> However, he also emphasised the need to find a balance, so that in cases where assets are expropriated, companies were protected. He provided a recent example of such a situation—

“You might think that that does not happen very often in the modern world, but think back to less than a year ago when Argentina took over Spanish assets in Argentina and, until ISDS was exercised, it did not pay any compensation for that. We are trying to find a way in which protection for physical assets can be guaranteed but not for the other things for which ISDS has been used.”<sup>91</sup>

97. Alyn Smith MEP and Iain Hudghton MEP expressed a concern about the inclusion of a ISDS mechanism that would “allow companies to seek recompense if they feel that the state has acted in a way that could threaten their investments.”<sup>92</sup> They stated that—

“Around the world there have already been a number of worrying ISDS cases, from tobacco companies suing over prohibited advertising in Australia to energy companies claiming compensation for not being allowed to frack in Canada. The Investor-State Dispute Settlement Mechanism must be either removed or limited in scope so that it could not be used to extract huge sums from the Scottish public purse.”<sup>93</sup>

98. The World Development Movement expressed concern about the impact including an ISDS mechanism would have—

“ISDS—will tip the balance of power away from Governments towards corporations through the ability for them to sue, and that in turn will shrink the policy space for Governments to devise policies and regulate in the public interest. That covers a wide range of things from food safety to public services, to the environment to human rights.”<sup>94</sup>

99. Friends of the Earth Scotland, suggested it could lead to regulatory chill, with governments becoming reluctant to introduce regulations or pass laws in case it resulted in litigation—

“The scale of what we are signing up for and the country that we are signing up with suggest that there is a much greater danger that we will end up in a lot of complex disputes that will go to tribunals. If that starts to come true, every elected representative will start to think, “Shall we put a law or a policy in place for that, as we might end up in court because of it?” That will start to slow down the Scottish Parliament’s powers, because at the back of their mind people will always think, “Hang on. How will the US react to that? Will

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<sup>90</sup> Scottish Parliament European and External Relations Committee. *Official Report, 20 November 2014*, Col. 19.

<sup>91</sup> Scottish Parliament European and External Relations Committee. *Official Report, 20 November 2014*, Col. 19.

<sup>92</sup> Alyn Smith MEP and Iain Hudghton MEP. Written submission.

<sup>93</sup> Alyn Smith MEP and Iain Hudghton MEP. Written submission.

<sup>94</sup> World Development Movement. Written submission.

Europe crack down on us, because it will get us in trouble with the US?” There could be a regulatory chill effect.”<sup>95</sup>

100. Unison Scotland was particularly concerned that the ISDS provisions could limit the ability of government to regulate in the public interest—

“ISDS allows investors to challenge government actions that they perceive as ‘expropriation’, i.e. threats to their investment. However, what is understood as ‘expropriation’ by investors can be the legitimate exercise of government regulation for the public good. For example, Veolia is currently using ISDS mechanisms to sue the Egyptian government for increasing the minimum wage. ISDS was also used against Slovakia when it sought to bring health insurance back into the public sector. Where they have been established, ISDS processes are often conducted in secret, are not based on existing case law and have no right of appeal, thus undermining governments’ ability to defend their actions.”<sup>96</sup>

101. The European Commission’s Deputy Chief Negotiator, Hiddo Houben, recognised that ISDS provided “private access to remedies that do not yet exist for other stakeholders in trade agreements.”<sup>97</sup> He provided an example of this by saying—

“...if there was a violation of labour law in a third country, a labour movement would not have a private right of access on that but would have to go through a Government-to-Government dispute settlement. Therefore, the political criticism that people on the left make of ISDS is well founded in that it provides a privileged legal avenue for business that is not available to other stakeholders in society.”<sup>98</sup>

102. A number of witnesses also referred to the existing court system being a more appropriate means to deal with disputes. Dr Arianna Andreangeli, a law lecturer at the University of Edinburgh, highlighted the importance of having an effective legal system—

“It is really important that disputes are heard in the context of what we on the continent call the “juge naturel”—that is, the natural judge for a particular claimant. The great danger of the ISDS is that it takes important disputes away from the court. I do not see why judges should not be well versed in dealing with such disputes.”<sup>99</sup>

103. Dr Andreangeli’s views were shared by Councillor Tony Buchanan, a Scottish Member of the EU Committee of the Regions. He referred to a “fear that by

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<sup>95</sup> Scottish Parliament European and External Relations Committee. *Official Report, 27 November 2014*, Col. 14.

<sup>96</sup> Unison Scotland written submission.

<sup>97</sup> Scottish Parliament European and External Relations Committee. *Official Report, 15 January 2015*, Col. 8.

<sup>98</sup> Scottish Parliament European and External Relations Committee. *Official Report, 15 January 2015*, Col 6.

<sup>99</sup> Scottish Parliament European and External Relations Committee. *Official Report, 27 November 2014*, Col. 16.

agreeing to have ISDS in TTIP this can be used by foreign companies to flout national courts and procedure and seek redress via the special arrangements set up in ISDS.”<sup>100</sup> He suggested that any dispute should be carried out in the first instance through Scottish Courts.

104. Mary Alexander of Unite Scotland stated that the European Trade Union Confederation (ETUC) had underlined trade unionists’ opposition to the inclusion of the ISDS provisions in the agreement, stating that—

“Considering that both parties are advanced economies with well-developed legal systems, the ETUC sees no reason to create a by-pass to national courts for foreign investors”.<sup>101</sup>

105. The Cabinet Secretary for Finance, Constitution and Economy indicated that the Scottish Government did not believe that investor-state disputes should be in the TTIP agreement, and that a state-to-state mechanism should be used instead. He expressed a concern that the Scottish judicial system would be undermined by ISDS—

“I do not see the necessity for a process under the investor state dispute settlement arrangements, because that would contradict or undermine the established systems of law within individual jurisdictions. I do not want the ability of the Scottish jurisdiction to determine issues that relate to the law of Scotland to be undermined in any way.”<sup>102</sup>

*The ISDS model used in the Comprehensive Economic and Trade Agreement (CETA) with Canada*

106. In evidence to the Committee, not only David Martin MEP, but also the European Commissioner and Lord Livingston made reference to the recently concluded trade and investment deal with Canada, suggesting that a variation on the provision in CETA might provide a model that could be improved – for instance by adding an appeals process – to respond to public concern about ISDS. Hiddo Houben, the European Commission’s Deputy Chief Negotiator, argued that in the CETA ISDS provision, the European Commission had—

“...made a huge qualitative step to improve the instrument in order to do away with some of the things that civil society has such difficulty with. In other words, under the Canada agreement, the proceedings have to be transparent; they cannot be done in secret. There is no longer a secret tribunal; the arbitration has to be done in public. The competence of the arbitrators is better and the qualitative criteria that are applied are more rigorous.”<sup>103</sup>

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<sup>100</sup> Councillor Tony Buchanan. Written submission.

<sup>101</sup> Scottish Parliament European and External Relations Committee. *Official Report, 27 November 2014*, Col. 12.

<sup>102</sup> Scottish Parliament European and External Relations Committee. *Official Report, 5 February 2015*, Col. 35.

<sup>103</sup> Scottish Parliament European and External Relations Committee. *Official Report, 15 January 2015*, Col.7.



107. Lord Livingston told the Committee that the UK Government's position was that the "right" ISDS clause should be in TTIP. He argued that the UK had 94 existing ISDS clauses in trade agreements, as well as the energy charter treaty, but that not a single case had been lost in the UK as a result of those agreements. He also suggested that the CETA model, with the addition of an appeals process might represent a solution. He concluded that—

"Given that we are the biggest investor in the US and the US is a big investor in the UK, we believe that it is helpful to have the right clause. It should make it entirely clear that the Government's right to regulate is protected, but by the same token it should protect against discriminative action against our companies in the US. It should find that balance."<sup>104</sup>

**108. The Committee remains unconvinced of the need for an investor-to-state dispute settlement mechanism to protect against discriminative action against EU companies in the US or US companies in the EU. Furthermore, we believe that genuine and well-founded concerns were presented to us in evidence about the risks of national court systems being bypassed by major corporations. Therefore, we believe that any disputes should be resolved in accordance with the legal systems and processes of the country concerned.**

**109. The Committee will continue to monitor developments in relation to ISDS, particularly the European Commission's decision in April-May 2015 on whether there should be an ISDS mechanism, and if there is, the form that it will take.**

### **Impact of TTIP on public services**

#### *Defining public and health services*

110. Since negotiations on TTIP began, there have been mounting concerns about the potential impact of the agreement on public services in Scotland, particularly the NHS. Councillor Tony Buchanan, a Scottish Member of the Committee of the Regions, provided the Committee with detailed written evidence setting out his concerns and the need for "cast-iron assurances that the rights of our public sector workers and our citizens are protected, and ... that this does not become a race to the bottom for public services."<sup>105</sup> In particular, Councillor Buchanan raised concerns about differences in the definition of public services between the EU and the US, as well as within the EU, and whether the reservations within the eventual agreement would be sufficient to protect public services in Scotland.<sup>106</sup>

111. Councillor Buchanan drew on his discussions in Brussels to inform the Committee that his understanding was that "the European Commission regards EU Treaty provisions on public services and the specific protection on Treaty Protocol 26 on Services of General Interest as the framework for any negotiation."<sup>107</sup> Councillor Buchanan referred to the safeguards included in the

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<sup>104</sup> Scottish Parliament European and External Relations Committee. *Official Report, 19 February 2015*, Cols. 42-43.

<sup>105</sup> Councillor Tony Buchanan. Written submission.

<sup>106</sup> Councillor Tony Buchanan. Written submission.

<sup>107</sup> Councillor Tony Buchanan. Written submission.

negotiating mandate, notably reservations around human health services and education services. He also stated that “as far as we are aware, the UK has indeed introduced reservations on the above services, as well as residential care services, social care CPC (933), pharmaceutical, retail energy, consultancy services, legal advice, NHS medical profession.”<sup>108</sup>

112. Councillor Buchanan concluded that these safeguards would be welcomed if they were confirmed at the end of the negotiations, but that “the question is however whether the above reservations are sufficient to protect public services, as there are other public services not covered”<sup>109</sup> in these lists.

*The EU’s approach to public services in trade agreements*

113. Ian Duncan MEP provided copies to the Committee of correspondence between himself and the European Commission Director General for Trade, Jean-Luc Demarty, in which he posed a series of questions about the implications of TTIP for Scotland. In his response to Ian Duncan’s question about whether a specific exemption was anticipated for health services within TTIP, Jean-Luc Demarty stated that “TTIP does not affect the UK or devolved governments’ sovereignty over how NHS services are provided, whether in Scotland or the rest of the UK.”<sup>110</sup> He also explained the EU’s approach to public services in trade agreements—

“The EU has followed a consistent pattern in all its trade agreements over the last 20 years since the creation of the World Trade Organization’s General Agreement on Trade in Services (GATS) in 1995. For publicly funded health services (such as hospital, residential health or ambulance services) the EU either takes no commitments at all (like the EU-Korean agreement which follows a positive list approach) or takes a full so-called “reservation” which effectively dispenses the EU from any market access or non-discrimination obligations (like in the recently published EU-Canada ... which follows a negative list approach). I would like to underline that in both scenarios, the so-called “ratchet” does not apply. Hence, any UK government decision to open up the publicly funded health services market to competition could subsequently be rolled back. The EU does not intend to change this approach in TTIP.”<sup>111</sup>

114. Lord Livingston explained that there was no specific reference to the NHS as “we are dealing with 28 states that all have their own publicly funded health services.”<sup>112</sup> In response to questioning by the Committee about why there was no explicit exclusion for public health services in the European Commission’s negotiating mandate, Lord Livingston stated “The mandate will build on GATS, and

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<sup>108</sup> Councillor Tony Buchanan. Written submission.

<sup>109</sup> Councillor Tony Buchanan. Written submission.

<sup>110</sup> Ian Duncan. Written submission.

<sup>111</sup> Ian Duncan MEP. Written submission.

<sup>112</sup> Scottish Parliament European and External Relations Committee. *Official Report, 19 February 2015*, Col. 28.

GATS has already excluded those services.”<sup>113</sup> Lord Livingston also quoted the reservation from CETA, describing it as “the state of the art”—

“The EU reserves the right to adopt or maintain any measure with regard to the provision of all health services which receive public funding or State support in any form”.<sup>114</sup>

115. In written evidence to the Committee, Alyn Smith MEP and Ian Hudghton MEP stated that—

“The central issue in regard to the NHS (and public services more generally) is the use of negative and positive lists to decide what will and will not be covered by the agreement. The use of a ‘negative list’ (effectively opt-outs) can provide less protection than positive lists (effectively opt-ins). The major complication in regard to TTIP comes because it seems likely that when it finally emerges TTIP will be a blend of these two systems giving it a very complicated remit.”<sup>115</sup>

116. In written evidence to the Committee, David Martin MEP and Catherine Stihler MEP explained that that—

“All EU trade agreements to date have included broad carve-out for public services, which protects EU Member States’ rights to keep services such as health, education and water in the public sector. In addition, Member State national governments are able to take out additional reservations on particular sectors (including, for example, public healthcare services) to ensure that even in cases where part or all of a service is put out to tender, the government has the right to restrict this to only one provider and exclude foreign service providers (i.e. tender only to European providers, not American in the case of TTIP).”<sup>116</sup>

117. David Martin MEP and Catherine Stihler MEP also indicated that it was “vital that the UK government and European Commission publish details of the services schedule for scrutiny.”<sup>117</sup> After the Committee had concluded taking evidence, the schedule they were referring to – the European Commission’s schedule of specific commitments and reservations for trade in services and investment – was leaked, and published by the BBC.<sup>118</sup> This included the reservation that “The EU reserves the right to adopt or maintain any measure with regard to the provision of all health services which receive public funding or State support in any form”,<sup>119</sup> which is the same text that was used in the CETA agreement.

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<sup>113</sup> Scottish Parliament European and External Relations Committee. *Official Report, 19 February 2015*, Col. 37.

<sup>114</sup> Scottish Parliament European and External Relations Committee. *Official Report, 19 February 2015*, Col. 28.

<sup>115</sup> Alyn Smith MEP and Ian Hudghton MEP. Written submission.

<sup>116</sup> David Martin MEP and Catherine Stihler MEP. Written Submission

<sup>117</sup> David Martin MEP and Catherine Stihler MEP. Written submission.

<sup>118</sup> BBC Scotland (26 February 2015). *TTIP: Transatlantic trade deal text leaked to BBC*. <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-31631461> [Accessed March 2015].

<sup>119</sup> BBC Scotland (26 February 2015). *TTIP: Transatlantic trade deal text leaked to BBC*. <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-31631461> [Accessed March 2015].

*Concerns about the protection of public services*

118. The Committee heard considerable evidence from witnesses about the potential detrimental impact of TTIP on public services. Dave Watson from Unison Scotland told the Committee—

“Unison’s primary concern is around public services. We are especially concerned because we do not see what we want, which is an unequivocal exclusion of public services from the TTIP negotiations. We would like the negotiations to operate on the basis of what is called a positive list: in other words, it would list the things that are included instead of excluding certain things and leaving everything else open.”<sup>120</sup>

119. This point was echoed by David Anderson of the University and College who referred to the “importance of having a positive list of areas that are included in TTIP rather than calling for the exclusion of certain areas.” He stated that this was—

“...particularly important when a Government can change the classification of a public service. The example has been given of further education in England, which was previously regarded as part of the public sector but was recently reclassified as a non-profit institution servicing households, which moves it out of the public sphere into an area that is semi-private and open to competition.”<sup>121</sup>

120. The Committee also heard evidence that TTIP would not impact on public services in either Scotland or the rest of the UK, particularly in relation to privatisation. Dr Arianna Andreangeli from the University of Edinburgh addressed the specific issue of whether health services would be included in any TTIP agreement. She told the Committee that although the EU had exclusive competence in the area of trade, it only had a supporting competence in healthcare and that EU actions could not, therefore, “have consequences that are as wide-ranging as might have been depicted so far”.<sup>122</sup> She explained—

“We must remember that the treaty is the constitution of the European Union—no more and no less—and it can be amended only through treaty amendment procedures with the consensus of all member states. The treaty states that member states remain free to decide how to design frameworks for provision of public health services. That can be changed only if there is a treaty amendment, and not through an international agreement.

...it is not through TTIP that the power of the member states to decide whether to provide healthcare services through the market or outside it is threatened. That is simply because the EU has no power, unless the member states confer that power on it, to modify the choices of the member states,

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<sup>120</sup> Scottish Parliament European and External Relations Committee. *Official Report, 27 November 2014*, Col. 3.

<sup>121</sup> Scottish Parliament European and External Relations Committee. *Official Report, 27 November 2014*, Col. 13.

<sup>122</sup> Scottish Parliament European and External Relations Committee. *Official Report, 27 November 2014*, Col. 7.

and it cannot mandate them on what form and framework they should construct for provision of healthcare services.”<sup>123</sup>

121. Dr Andreangeli went on to explain that although in the EU context healthcare is a competence of the United Kingdom Government—

“...we must bear it in mind that Scotland enjoys full powers to regulate health services in Scotland according to the Scotland Act 1998. To be honest, I see that as a safeguard for Scotland, because before those powers could be changed there would have to be a debate in Westminster about the 1998 act, and the way that things are evolving indicates that there is quite a lot of appetite for devolving more powers to the Holyrood Parliament as opposed to taking powers away from it. To be honest, unless politicians were completely schizophrenic in that respect, which I frankly do not believe they would be, I do not see any backtracking on the NHS happening.”<sup>124</sup>

122. In evidence to the Committee, Hiddo Houben from the European Commission addressed the issue of whether TTIP could lead to the privatisation of the National Health Service in Scotland or whether there might be a specific exemption for health services in TTIP. He explained that an exemption, known as a “reservation”, would be incorporated into TTIP to provide that “the TTIP agreement could never impose an obligation to privatise or liberalise a sector that is under public funding.”<sup>125</sup> He also stated that TTIP would provide for a Government to reverse a privatisation if it so wished. When pressed on the issue of whether the Scottish Government could prevent access to Scotland’s publicly funded health services even if the United Kingdom Government decided to open them up through TTIP, Mr Houben said—

“Yes—at least as far as TTIP is concerned. I do not know the specificities of your constitutional relationship with the UK, but TTIP will not in any way affect the relationship between Scotland and the UK. If you can do it, within your constitutional relationship, TTIP will not in any way be a hurdle to that.”<sup>126</sup>

123. On 26 January 2015, European Commissioner Cecilia Malmström wrote to Lord Livingston to outline the Commission’s position with regard to TTIP and the National Health Service. The letter stated:

“To be clear, the effects of the EU’s approach to public health services in trade agreements such as TTIP are that:

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<sup>123</sup> Scottish Parliament European and External Relations Committee. *Official Report, 27 November 2014*, Cols. 6-7.

<sup>124</sup> Scottish Parliament European and External Relations Committee. *Official Report, 27 November 2014*, Col. 16.

<sup>125</sup> Scottish Parliament European and External Relations Committee. *Official Report, 15 January 2015*, Col. 12.

<sup>126</sup> Scottish Parliament European and External Relations Committee. *Official Report, 15 January 2015*, Col. 16.

- Member States do not have to open public health services to competition from private providers, nor do they have to outsource services to private providers;
- Member States are free to change their policies and bring back outsourced services back into the public sector whenever they choose to do so, in a manner respecting property rights (which in any event are protected under UK law);
- It makes no difference whether a Member State already allows some services to be outsourced to private providers, or not.

We use a series of reservations in EU trade agreements to make sure that EU Member State governments (at all levels, from central government to local authorities) can continue to manage their public services however they see fit. For example, we reserve the right for governments to operate monopolies and grant exclusive rights for selected providers, whether these are public or private operators. We make sure that governments do not have to open up any of their public services markets (such as publicly-funded health services) to private operators if they do not want to, and that should they choose to do so, there is nothing to prevent them reversing this decision in future. Member States have the possibility to modulate reservations according to their needs as part of EU trade negotiations. The UK is covered by these reservations, has always followed this approach, and is free to decide to continue to do so in TTIP.<sup>127</sup>

124. In evidence to the Committee, the Cabinet Secretary for Finance, Constitution and Economy addressed the issue of public services and TTIP. He told the Committee that it was “important that markets are not opened up in a way that compromises public services or the Government’s responsibility for them.”<sup>128</sup> He told the Committee that in the past six months, the Scottish Government had written to the UK Government and the Commission to “ensure that TTIP does not affect the Scottish Government’s and Parliament’s ability to determine how and by whom the national health service and other publicly funded services are provided”.<sup>129</sup> The Scottish Government had also raised the issue at the Joint Ministerial Committee and the First Minister had discussed it with the Prime Minister at a meeting in December 2014.

125. The Cabinet Secretary was concerned that while reassurances had been given, it remained “the case that, until we see the details of the agreement, we will not know whether those reassurances have any validity at all.”<sup>130</sup> He therefore

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<sup>127</sup> Letter from European Commissioner Cecilia Malmström to Lord Livingston, UK Government. Available at: [http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc\\_152665.pdf](http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152665.pdf) [Accessed March 2015].

<sup>128</sup> Scottish Parliament European and External Relations Committee. *Official Report*, 5 February 2015, Col. 28.

<sup>129</sup> Scottish Parliament European and External Relations Committee. *Official Report*, 5 February 2015, Col. 28.

<sup>130</sup> Scottish Parliament European and External Relations Committee. *Official Report*, 5 February 2015, Col. 28.

suggested that a “double lock” was required to ensure that the Scottish NHS could not be adversely affected by TTIP—

“The Scottish Government could not have made it clearer that we in no way want the legitimate right of the Parliament and, under the auspices of Parliament, the authority of the Government to be in any way questioned as regards our ability to determine how the NHS should operate, be structured or deliver services in Scotland. We want there to be no restriction and no danger of restriction on our ability to act properly in exercising our devolved competence in that area. If we want to protect the existing arrangements that allow us to determine those choices democratically here in Scotland, we must be absolutely certain that TTIP does not compromise that ability.

It is almost a double lock that is required. If the UK Government said that an exemption should be written into the TTIP agreement whereby the NHS would be outwith the scope of any possible impact of TTIP, we would also want the Scottish Parliament’s devolved responsibilities to be respected in that process because, as we know, the approach that is being taken to the management and organisation of the health service in England is very different from the one that we are taking in Scotland. It is important that a double lock exists in the form of a protection at member state—UK—level and a protection for the devolved competence of the Scottish Government acting with the Scottish Parliament’s consent.”<sup>131</sup>

126. In oral evidence to the Committee, Lord Livingston, the UK Minister of State for Trade and Investment, indicated that he had not come across another country in Europe that wanted its publicly funded health services to be included in TTIP. He stated that, “the European Commission, the European Governments and the UK Government do not seek to have those health services included in TTIP”<sup>132</sup> and that the “US Government does not seek to include public services in health agreements.”<sup>133</sup> He also provided the Committee with a copy of a letter that he had sent to the First Minister on 24 November 2014. In the letter, Lord Livingston stated—

“There is no threat to the UK’s National Health Service from TTIP. None. TTIP will not oblige the UK to open up publicly funded health services to private companies. We’ve said so time and again. I have said it. The Prime Minister has said it. The European Commission has said it. As has the US government. I repeat that the NHS will not be at risk due to TTIP.”<sup>134</sup>

**127. The protection of public services in Scotland, particularly NHS Scotland, was a key concern of those giving evidence to the Committee. The**

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<sup>131</sup> Scottish Parliament European and External Relations Committee. *Official Report*, 5 February 2015, Col. 30.

<sup>132</sup> Scottish Parliament European and External Relations Committee. *Official Report*, 19 February 2015, Col. 27.

<sup>133</sup> Scottish Parliament European and External Relations Committee. *Official Report*, 19 February 2015, Col. 27.

<sup>134</sup> Letter from Lord Livingston to the First Minister of Scotland. Available at: [http://www.scottish.parliament.uk/S4\\_EuropeanandExternalRelationsCommittee/Inquiries/TTIP\\_LordLivingston\\_to\\_FirstMin\\_24.11.14.pdf](http://www.scottish.parliament.uk/S4_EuropeanandExternalRelationsCommittee/Inquiries/TTIP_LordLivingston_to_FirstMin_24.11.14.pdf) [Accessed March 2015].

**Committee heard from the UK Government and the European Commission that public and health services were not at risk from the agreement. However, we remain concerned about the definitions of public services and whether the reservations contained in the final agreement would protect the full range of public services that are delivered in Scotland. The Committee will therefore continue to monitor any developments in relation to whether definitions of public services in the TTIP agreement, particularly where they draw on the model contained in the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada, fully cover the provision of public services in Scotland.**

**128. The Committee recognises that despite the public statements from the UK Government and the European Commission that there is no risk to public services, the continuing public concern is indicative of a lack of trust in the whole negotiating process. We believe that these concerns have been exacerbated by the failure to make the text – or part of the text - on the reservations public. We consider it regrettable that, for the second time, information that would benefit the understanding of the process for the public has been made available by the leaking of a key European Commission negotiating document on the reservations.**

**129. The Committee encourages the UK Government and the European Commission to consider the Cabinet Secretary for Finance, Constitution and Economy’s suggestion that a “double lock” be developed to secure public trust and confidence in the TTIP negotiations.**

### **General Conclusion**

**130. The Committee believes that its inquiry work into TTIP has been very important, even though the Scottish Parliament will have no direct role in ratifying the eventual agreement and the Scottish Government has not direct role in the negotiations. The inquiry has allowed Scottish voices and Scottish concerns to be heard on this issue and, we hope, that by sending this report to the UK Government and the European Commission, that we can raise awareness of those concerns and influence the negotiation of an agreement that is constructive for the people that will live with its consequences.**

**131. This inquiry has demonstrated to us how distant people and organisations in Scotland can feel from the decisions that are taken in Brussels. Decisions relating to TTIP have to permeate layers of government: from the European Commission to the UK as the Member State, and from the UK Government to the Scottish Government. Where there are concerns in Scotland, these have to be transmitted back through these layers in the hope that they will be taken into account in the eventual negotiations. We therefore understand the public frustrations and concerns on this issue.**

**132. The Committee believes that Scotland’s representatives in the European Parliament and the Committee of the Regions have played an extremely valuable role in raising and addressing Scottish concerns, and we have valued their input to this inquiry greatly.**



**133. The conclusions and recommendations set out above represent our initial position in relation to TTIP. As a Committee, we intend to conduct further inquiry work, particularly to explore issues relating to ISDS and public services. In taking more evidence, we will also seek to clarify the effect of the provisions in the CETA with Canada, which are being drawn on as models in the TTIP agreement.**

**ANNEXE A: EXTRACT OF MINUTES OF THE EUROPEAN AND EXTERNAL RELATIONS COMMITTEE**

**[20th Meeting \(2014\) Session 4, Thursday 13 November 2014](#)**

**Transatlantic Trade and Investment Partnership (TTIP) – implications for Scotland:** The Committee considered and agreed its approach to the inquiry.

**[22nd Meeting \(2014\) Session 4, Thursday 27 November 2014](#)**

**Transatlantic Trade and Investment Partnership (TTIP) – implications for Scotland:** The Committee took evidence from—

Mary Alexander, Deputy Regional Secretary, Unite Scotland;

David Anderson, Scotland President, University and College Union;

Arianna Andreangeli, Lecturer in Competition Law, Edinburgh University;

Stephen Boyd, Assistant Secretary, STUC;

Richard Dixon, Director, Friends of the Earth Scotland;

Liz Murray, Head of Scottish Campaigns, World Development Movement;

Scott Walker, Chief Executive, National Farmers Union Scotland;

Dave Watson, Scottish Organiser (Bargaining and Campaigns), Unison Scotland.

Jamie McGrigor declared an interest as a member of the National Farmers Union Scotland.

**[23rd Meeting \(2014\) Session 4, Thursday 11 December 2014](#)**

**Transatlantic Trade and Investment Partnership (TTIP) – implications for Scotland:** The Committee took evidence from—

David Breckenridge, Chief Executive, Scottish Textile and Leather Association;

John Crawford, Strategy Manager, Scottish Enterprise;

Benny Hartop, Managing Director, Hawick Knitwear Company;

Allan Hogarth, Executive Director, Scottish North American Business Council; and the Institute of Directors Scotland;

Scott Johnstone, Chief Executive Officer, Scottish Life Sciences Association;

David Williamson, Director of Government and Communications, Scotch Whisky Association.

**1st Meeting (2015) Session 4, Thursday 15 January 2015**

**Transatlantic Trade and Investment Partnership (TTIP) – European Commission:** The Committee took evidence, in a video conference, from—

Hiddo Houben, Deputy Chief Negotiator for the Transatlantic Trade and Investment Partnership, European Commission.

**3rd Meeting (2015) Session 4, Thursday 5 February 2015**

**Transatlantic Trade and Investment Partnership (TTIP) – implications for Scotland:** The Committee took evidence from—

John Swinney, Cabinet Secretary for Finance, Constitution and Economy, and Richard Rollison, Head of EU and Trade Policy, Business Directorate, Scottish Government.

**4th Meeting (2015) Session 4, Thursday 19 February 2015**

**Transatlantic Trade and Investment Partnership (TTIP) - implications for Scotland:** The Committee took evidence from—

Lord Livingston, Minister of State for Trade and Investment, and Edward Barker, Head of Transatlantic and International Unit, Department for Business, Innovation and Skills, UK Government.

**5th Meeting (2015) Session 4, Thursday 5 March 2015**

**Transatlantic Trade and Investment Partnership (TTIP) – implications for Scotland (in private):** The Committee considered a draft report. Various changes were agreed to, and the Committee agreed to consider a revised draft, in private, at its next meeting.

**6th Meeting (2015) Session 4, Thursday 12 March 2015**

**Transatlantic Trade and Investment Partnership (TTIP) – implications for Scotland (in private):** The Committee considered the draft report. Various changes were agreed to, and the report was agreed for publication.

## **ANNEXE B: ORAL AND WRITTEN EVIDENCE**

The European and External Relations Committee would like to thank all of those who provided oral and written evidence to the Committee in the context of this inquiry.

The Committee held roundtable discussions on 27 November and 11 December 2014 to hear the views of stakeholders on the relative opportunities and risks that an EU-US trade agreement could have in Scotland across key devolved areas.

### **Oral evidence**

#### **[22nd Meeting \(2014\) Session 4, Thursday 27 November 2014](#)**

Mary Alexander, Unite Scotland;  
David Anderson, University and College Union;  
Arianna Andreangeli, Edinburgh University;  
Stephen Boyd, STUC;  
Richard Dixon, Friends of the Earth Scotland;  
Liz Murray, World Development Movement;  
Scott Walker, National Farmers Union Scotland;  
Dave Watson, Unison Scotland.

### **Written evidence**

- [University and College Union \(26KB pdf\)](#)
- [Arianna Andreangeli \(78KB pdf\)](#)
- [STUC \(78KB pdf\)](#)
- [Friends of the Earth Scotland \(28KB pdf\)](#)
- [World Development Movement \(41KB pdf\)](#)
- [National Farmers Union Scotland \(26KB pdf\)](#)
- [Unison Scotland \(29KB pdf\)](#)

Scottish MEPs submitted written evidence to the Committee:

- [Written evidence from MEPs \(2073KB pdf\)](#)

### **Oral evidence**

#### **[23rd Meeting \(2014\) Session 4, Thursday 11 December 2014](#)**

David Breckenridge, Scottish Textile and Leather Association  
John Crawford, Scottish Enterprise  
Benny Hartop, Hawick Knitwear Company  
Allan Hogarth, Scottish North American Business Council and the Institute of Directors Scotland  
Scott Johnstone, Scottish Life Sciences Association  
David Williamson, Scotch Whisky Association.

**Written evidence**

- [Scottish North American Business Council \(SNABC\) \(23KB pdf\)](#)

**Oral evidence**

**[1st Meeting \(2015\) Session 4, Thursday 15 January 2015](#)**

Hiddo Houben, Deputy Chief Negotiator for the Transatlantic Trade and Investment Partnership, European Commission.

**Oral evidence**

**[3rd Meeting \(2015\) Session 4, Thursday 5 February 2015](#)**

John Swinney, Cabinet Secretary for Finance, Constitution and Economy, and Richard Rollison, Head of EU and Trade Policy, Business Directorate, Scottish Government

**Oral evidence**

**[4th Meeting \(2015\) Session 4, Thursday 19 February 2015](#)**

Lord Livingston, Minister of State for Trade and Investment, and Edward Barker, Head of Transatlantic and International Unit, Department for Business, Innovation and Skills, UK Government.

**Written evidence**

Supplementary written evidence from Lord Livingston to Nicola Sturgeon, First Minister.

- [Lord Livingston to First Minister, TTIP, November 2014 \(107KB pdf\)](#)

**Written evidence was also received from:**

- [CBI Scotland \(108KB pdf\)](#)
- [COSLA \(34KB pdf\)](#)
- [European Movement in Scotland \(139KB pdf\)](#)
- [Cllr Tony Buchanan \(24KB pdf\)](#)
- [NHS for YES \(9KB pdf\)](#)

Please note that all oral evidence and associated written evidence are published electronically only, and can be accessed via the European and External Relations Committee's webpages, at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/83830.aspx>

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