

Brussels, 12. 05. 2015

Dear Ms McKelvie,

Thank you for your letter of 23 March 2015 enclosing the report of the Scottish Parliament's European and External Relations Committee about the negotiations for a Transatlantic Trade & Investment Partnership (TTIP). I find this a useful report and I appreciate your work in developing it. I write to offer some views on a number of your recommendations.

As you know, when I took up my position as Commissioner for Trade last year I announced a series of measures to increase the transparency of the TTIP negotiations. In January, we published all the existing EU negotiating texts that had been shared with the US until that point, and we continue to publish additional papers as they become available. We have also taken steps to broaden the access of all Members of the European Parliament to TTIP documents. We have prepared additional material for our website to explain our negotiating positions and approaches on all topics, and we are reporting extensively on the outcome of each negotiating round. I myself am taking every opportunity to engage with civil society and the public, including via the European Economic & Social Committee and the Committee of the Regions, as well as my regular discussions with Member States and the European Parliament.

I believe that these efforts are beginning to make a difference to the public debate, and I intend to continue to seek ways to improve our communications and outreach as the TTIP negotiations move forward. Looking ahead to future EU trade negotiations, there may be some lessons that can be learnt – though every deal is different and we need to take into account the interests of all involved.

With regards to investment protection and Investor-State Dispute Settlement (ISDS), in my view TTIP is an opportunity to make the system fit for the future. Though I appreciate the Committee's point that disputes should be resolved at national level, it is important to remember that currently there is no law in the US that prohibits discrimination against foreign investors, and it is not possible to enforce the provisions of an international agreement such as TTIP at national level. So there is a gap to fill. We have listened carefully to the concerns expressed in the consultation last year, and I am now working with the European Council, European Parliament and other stakeholders to develop a proposal on ISDS in TTIP. This will focus on specific improvements to reflect the main issues raised in the consultation: ensuring the right to regulate is preserved, developing an appeals system, making arbitrators genuinely independent, and clarifying the relationship between ISDS and domestic courts.

Ms Christina McKelvie  
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I find the Committee's report especially helpful with regards to the questions raised in Scotland about TTIP's possible impact on the National Health Service, since it brings together a range of views from experts and stakeholders. With regards to the "double lock" suggested by Cabinet Secretary John Swinney, as you will be aware I believe that the EU already provides sufficient protections for public services including the NHS in its trade agreements. In fact, I made a joint declaration<sup>1</sup> with my US counterpart Michael Froman last month, confirming that TTIP will neither require EU or US governments to privatise any service, nor prevent them from bringing back services previously contracted to private suppliers into the public sector. However, I cannot comment on whether there is a need for the UK government to offer any additional protections with regards to the Scottish Government's devolved competence over health policy.

With regards to improving the Commission's engagement with Scotland on TTIP, I trust that the initiatives I have already outlined are starting to make a difference. I have already offered to meet with Cabinet Secretary John Swinney as soon as we can find a mutually convenient opportunity. I would also be delighted to consider arranging a visit to Scotland at some point, to further explain the EU's approach to the TTIP negotiations and to hear further views from Scottish people and organisations, as well as your Committee. My staff has already had preliminary contacts with our office in Scotland.

Thank you again for sharing the Committee's report. I trust that this addresses your main concerns. Please do not hesitate to be in touch with me or my team for any additional clarifications.

Yours sincerely,



Cecilia Malmström

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<sup>1</sup> [http://trade.ec.europa.eu/doclib/docs/2015/march/tradoc\\_153264.pdf](http://trade.ec.europa.eu/doclib/docs/2015/march/tradoc_153264.pdf)