

Brussels, **14 JUL. 2017**
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Dear Dr Kolb,

Thank you for your letter of 22 May outlining your vision for a progressive trade policy.

I have read the attached proposal with great interest, and I am pleased to see that we share many of the same concerns, and that the Commission is already acting on the points raised by your members. Indeed, when launching our new trade strategy Trade for All in October 2015, it was my key objective to craft a trade policy that is effective, based on European values and standards, and formulated in a transparent and consultative manner.

Allow me to respond to the key demands of your paper:

- “Trade policy should not restrict high standards and consumer protection”: The EU is firmly committed that any trade agreement can only ever increase the levels of consumer, social, environmental or labour protection. This principle is being applied in all negotiations, most recently for example in CETA. I would like to recall that the CETA provisions on regulatory cooperation are voluntary, providing a framework for exchange between authorities, and do not override the right of governments to legislate in the public interest. The EU works with all partners on ambitious sustainable development chapters based on respect of international labour and environmental conventions. Synergies with development policies are important, and the EU finances many schemes aimed at increasing these standards in the poorest countries.
- “Trade policy must contribute towards sustainable agriculture”: The EU shares your view of agricultural subsidies – in fact, EU subsidy schemes were decoupled from production in 2003, and are disbursed in support of sustainable agriculture and only after ensuring compliance with food safety, biodiversity, environmental or animal health and welfare standards. We work in synergy with the EU Common Agricultural Policy, for example by leading the way towards a 2015 WTO deal prohibiting export subsidies in agriculture. In bilateral deals, too, we respect the choice of our counterparts and developing countries in particular – for example, the Economic Partnership Agreements with African, Caribbean and Pacific countries.
- “Trade and investment agreements may not contain any special complaint rights for companies”: Following a large-scale public consultation in the framework of TTIP negotiations that you refer to, the EU reformed its approach to investor dispute settlement. The new Investment Court System, already negotiated in the Canada and Vietnam agreements, builds a transparent and impartial system that places a stronger emphasis on the state’s right to regulate. Foreign and domestic investors are treated equally.

Dr Felix Kolb, Executive Director
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Based on stakeholder demand, we are now consulting on a possible further shift towards a Multilateral Investment Court, and I hope that you participated in that public consultation to share your concerns in detail.

- “Trade policy may not come in the way of regulation of financial markets and must fight against tax loopholes”: In 2016, the EU revised its Anti-Money-Laundering and Accounting Directive listing non-cooperative foreign tax jurisdictions, requiring multinational companies to report any activities in such jurisdictions and providing capacity building in third countries to combat tax avoidance and mispricing of internationally-traded goods. EU trade agreements do not prevent public authorities from legislating in the public interest, and, in fact, EU trade policy supports tax and customs authorities that combat tax evasion and money-laundering, including by promoting OECD and G20 principles on for example beneficial ownership transparency.

- “Trade policy must contribute towards protecting human rights along the entire supply chain”: I agree with you that trade policy must make its contribution to promoting respect of human rights. One of my proudest achievements is the adoption of the Conflict Minerals Regulation late last year. The new law stops conflict minerals and metals from being exported to the EU, stops global and EU smelters and refiners from using conflict mineral and stops mine workers from being abused. The law also supports the development of local communities and it requires EU companies to ensure they import these minerals and metals from responsible sources only. We are now exploring how to build on this success in responsible supply chain management in other sectors.

The EU also actively pursues the application of any commitments taken within its trade instruments, be it the FTAs or special incentive schemes such as the GSP+. It is simply not true that trade policy does not react to deterioration in human rights situation. A few recent examples: trade negotiations with Thailand are currently suspended due to governance concerns. Sri Lanka lost its preferential access to the EU – and, following substantial improvements in guaranteeing human and labour rights to its citizens, regained this access just last month, showing that the EU approach works.

Furthermore, since 2009 the EU has the most advanced legislation to control trade in goods used for torture and capital punishment. In 2016 the European Parliament adopted by overwhelming majority a further strengthening of the legislation, prohibiting the exhibition of banned products at trade fairs, transit of these products through the EU territory and advertising services. The EU legislation is making the use of these products for torture and capital punishment more difficult and more expensive. As a consequence, the supply of drugs used in lethal injections has been postponed and opened a debate about capital punishment in several states in the USA.

- “Trade policy must make an active contribution towards achieving the UN climate objectives”: The EU trade policy contributes to the overall policy objectives of the Union, including on climate change and renewable energy. We must however be aware that this policy area, like so many others you mention, require action across the entire policy spectrum, and cannot be adequately addressed by trade agreements alone. Trade policy can for example facilitate trade in so-called “green goods”, and the EU is the main sponsor of the negotiations towards a multilateral Environmental Goods Agreement. Trade agreements can also promote environmental standards, which are now part and parcel of every single FTA negotiation.

- “Trade policy may not hamper basic public services”: Let me stress, once again, that EU trade agreements do not prevent public authorities from legislating in the public interest. EU agreements also explicitly recognise the right of governments, at all levels, to provide and support services that they consider public.

The CETA text is state-of-the-art in this respect and I would invite you to consult it, alongside the Interpretative Declaration that accompanies the agreement and addresses these issues. There is also absolutely no obligation to privatise public services, nothing to prevent creation of new services in new sectors, and nothing to prevent bringing back government control to previously privatised sectors. Furthermore, public procurement can freely use environmental, social and labour criteria in award considerations.

- “Trade policy must be fair”: The overarching aim of the Trade for All strategy is that trade policy benefits all citizens, and all countries – I share your demand that trade must afford development opportunities to all countries and I am convinced that trade can deliver on development. Under the preference schemes EBA, GSP and GSP+, the EU grants unilateral preferences to all developing countries, without any trade opening on their part. Developing countries that choose to enter into a bilateral agreement benefit from a range of concessions not normally offered to our trading partners. The Economic Partnership Agreements which you mention offer the most generous market access and rules of origin of any EU agreement. They allow our partners to protect a significant part of their market and liberalise over a very long period of time, while benefitting from a full, immediate and unconditional access to the EU market on all products. The Agreements are crafted on the basis of regional groupings chosen entirely by our partners, and in accordance with their own wishes for trade integration in their immediate neighbourhood.

In the multilateral arena, the EU supports the principle of “special and differential treatment” for developing countries, meaning that they benefit from special facilities, longer transition periods and exemptions not granted to developed members. To mention just a few recent multilateral achievements, the Trade Facilitation Agreement modernises and simplifies customs procedures so that even the poorest countries can benefit from trade, and a special arrangement under the intellectual property rules facilitates least-developed country access to medicines.

- “Trade policy must be organised as more democratic and transparent”: I place great emphasis on the transparency of trade negotiations, and have made it a specific aim of the EU trade strategy to make the way we shape our trade policy more consultative and transparent. I am pleased to say that over the past few years, the Commission has made great strides in improving the transparency of negotiations. All new negotiating texts are now published, alongside other documents such as round reports. The Commission systematically invites the Council to publish negotiating mandates, as has been done for example for TTIP, CETA or TiSA.

The Commission has formally invited the Council in several occasions to publish the negotiating mandates for FTAs with Japan, Mexico and Mercosur. Civil Society consultative events are organised regularly and feed into the decision-making process, as is illustrated by the change of EU policy on investor-to-state dispute settlement. The European Parliament is closely involved in the process, receiving all documents the Council receives. The Commission debriefs the EP on negotiations regularly, and the EP is also involved in the implementation of agreements. The Commission carries out exhaustive impact assessments prior to the start as well as during negotiations of every agreement, and formal public consultation forms part of every impact assessment.

You also raise the point on participation of national parliaments – this is an important question for all EU governments and institutions, and goes to the heart of the Treaties. The Commission systematically invites the Council to consult national parliaments on proposed negotiating directives early on. I myself try to speak to national parliaments and answer their questions on trade matters whenever I travel within the Union.

Your feedback is invaluable to the EU's work on delivering a trade policy that is inclusive and responsive to the concerns and wishes of European citizens. I would like to invite you to take full advantage of participating in the regular Civil Society Dialogues and public consultations the Commission organises. These are not limited to trade policy only, as many of the issues raised in your paper concern policy areas as wide as education, tax, or employment. In this regard, I also hope your organisation will contribute to the debate on what the EU action on globalisation should be, launched by a Globalisation Reflection Paper published this May.

As you rightly point out, the economic challenges Europe now faces stem from technological change and touch on the highly political question of income redistribution – and trade policy can only ever be one part of a coordinated policy response.

I look forward to continuing this useful discussion. Later this year, we will publish a Report on the implementation of the Trade for All strategy, taking stock of what has been achieved and where there is still work to do.

Yours sincerely,



Cecilia Malmström