

EUROPEAN COMMISSION  
Directorate-General for Trade

The Director General

Brussels,  
DG Trade/Ares (2013)

Mr Scott Brown  
E-mail:ask+request-335-ca93eaaa@asktheeu.org

**Subject: Your application for access to documents – Ref GestDem No 2013/0480**

Dear Mr Brown,

Thank you for your e-mail dated 31 January 2013 and registered on 1 February 2013 requesting access to documents under Regulation (EC) No 1049/2001<sup>1</sup> regarding public access to European Parliament, Council and Commission documents ("the Regulation").

Your application concerns the following:

*'Under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, I am requesting documents which contain information pertaining to China's request for the EU to grant Market Economy Status. I am interested in documents from 2003 until the present. In particular, the following would be helpful:*

- Documents outlining the Commission's position on MES for China, including proposals/recommendations to the Council on the viability of MES for China.*
- Documents from DG Trade pertaining to this issue.*
- Documents from the office of the Commissioner responsible for External Trade, including public speeches making reference to this issue.*
- Documents between the Commission and the Permanent Representations of the Member States outlining their respective positions on granting China MES.'*

In addition to the above, on 5 February 2013, you clarified the scope of your request, as follows:

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<sup>1</sup> OJ L 145, 31.5.2001, p. 43.

*'By documents, I meant reports from the Commission used to determine the progress in China's attempts to meet the Commission's criteria for MES.*

*- I believe there is a working group commonly referred to as the Article 133 committee, documents relating to the outcome of this committee's review of China's MES would be relevant.*

*- Any formal proposals put forward by the Commission (whether or adopted or not) and explanatory memorandum relating to this issue would be useful.*

*- I believe that the Trade Commissioner is responsible for updating the Council on China's progress towards MES, therefore written evidence or supporting documentation submitted would be another set of documents I would be interested in.'*

Let me first apologise for the delay in sending you the documents, which resulted from the need to locate and examine a large number of documents in order to provide you with an accurate reply.

We have prepared a list of meeting documents, notes, letters, correspondence and working documents falling within the scope of your request, which you will find enclosed as Annex 1. In total, the list consists of 58 documents classified in chronological order.

Two documents, the 'Information Note from Commissioner Lamy' to the College on MES and the 'Commission staff working document on progress by the People's Republic of China towards graduation to market economy status in Trade Defence Investigations', are already in the public domain and can be found on the web pages listed in the table of documents under nos. 4 and 49. For your convenience, we also attach these documents with this reply (see annexes 3 and 4). Please note that the publication of the 'Commission staff working document on progress by the People's Republic of China towards graduation to market economy status in Trade Defence Investigations' was an exception. Normally, working documents describing a country's progress towards obtaining MES are not made public in the interest of the dialogue between the EU and the applicant country.

We also enclose two other documents (nos. 2 and 56 in the list of documents) which are replies from Commissioners Lamy and De Gucht to letters received by them and pertaining to MES in the context of trade defence investigations. These attached documents are labelled, respectively, as annexes 2 and 5.

Access to the remaining documents cannot be granted since their disclosure is prevented by the exceptions to the right of access laid down in Article 4 of the Regulation, in particular Article 4(1)a, third indent, which states that *'[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: (a) the public interest as regards: <...> international relations'*.

Documents no. 1, 5-8, 41-43 and 46-48 are internal notes containing exchanges of opinions, including views concerning the timing for granting MES to China, and/or

information between the External Trade Commissioner (or Head of Cabinet) and the Director-General of the External Trade Directorate-General (DG TRADE). Documents 3, 44 and 57 are internal working documents that assess China's progress on the criteria to be met for obtaining MES. Public disclosure of these documents could potentially undermine the protection of international relations of the EU by revealing information regarding the political strategy to be adopted and the next steps envisaged with regard to granting MES to China. Therefore, disclosure of such documents could have an impact on EU's relations with China and undermine the EU's position when dealing with this specific issue. Moreover, it cannot be discarded that the Chinese Government could react to the public disclosure of such opinions or information in a manner that could be detrimental to China's working relationship with the EU.

The documents listed under nos. 9-40, 50-55 and 58 cover exchanges of views with, and updates for, the EU Member States in the context of granting MES to China. Their disclosure should also be protected under Article 4(1)a, third indent of the Regulation. Exchanges between the Commission and the representatives of the Member States inevitably touch upon the issues of international trade relations, a subject matter of particular political sensitivity. Disclosure of the contents of such documents, and thereby the identity of one or more EU Member States expressing concerns and/or the substance of the concerns with regard to granting MES to China, could weaken the protection of international relations with this country. Therefore, the exception mentioned in Article 4(1)a, third indent, applies to these documents.

In addition, the disclosure of the 53 documents cited above is protected by the exception foreseen in Article 4(3) of the Regulation which states that '*access to a document drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not yet been taken by the institution, shall be refused if the disclosure of the document would seriously undermine the institution's decision making process, unless there is an overriding public interest in disclosure*'. Given that there is no decision taken yet on granting MES to China, access to these documents cannot be granted.

The remaining document (no. 45) is also covered by the exceptions under Article 4 of the Regulation. Article 4(2), first indent, of the Regulation states that '*[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: commercial interests of a natural or legal person, including intellectual property <...> unless there is an overriding public interest in disclosure*.' This document concerns exchanges between Commissioner Mandelson and a third party and contains confidential information concerning the party involved, the disclosure of which would undermine their commercial interests. In fact, revealing the name of the entity concerned could undermine the position of this entity on the Chinese market and even expose this entity to retaliatory actions in China. As a result, pursuant to Article 4(2), first indent, it cannot be disclosed.

The possibility of granting partial access to the protected documents listed above, according to Article 4(6) of the Regulation, has also been examined. However, it follows from the above assessments that the documents previously cited should be entirely covered by the exceptions mentioned above.

The exceptions laid down in Article 4(2) and 4(3) of the Regulation apply unless there is an overriding public interest in disclosure of the documents. Accordingly, the presence of an overriding public interest in disclosure has also been assessed. In the present case, there is no such evidence. On the contrary, the prevailing interest in this case rather lies in protecting the purpose of the Commission's internal consultations as well as the decision-making process at the heart of these consultations.

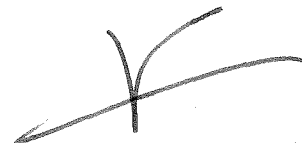
If you want this position to be reviewed, you should write to the Commission's Secretary-General at the address below, confirming your initial request. You have fifteen working days in which to do so from receipt of this letter, after which your initial request will be deemed to have been withdrawn.

The Secretary-General will inform you of the result of this review within 15 working days from the registration of your request, either granting you access to the documents or confirming the refusal. In the latter case, you will be informed of how you can take further action.

All correspondence should be sent to the following address:

European Commission  
Secretary-General  
Transparency unit SG-B-5  
BERL 5/327  
B-1049 Bruxelles  
or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized 'J' and 'L' followed by a horizontal stroke.

Jean-Luc DEMARTY

Encl. (annexes 1 to 5)