



EUROPEAN COMMISSION

Directorate-General for Trade

Directorate B - Services and Investment, Intellectual Property and Public Procurement
Investment

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Trade/B2/AS - 2622779

Ms. Pia Eberhardt
ask+request-428-fc1d05a0@asktheeu.org

Subject: Your application for access to documents – Ref GestDem No 1521/2013

Dear Mrs Eberhardt,

Thank you for your request for access to documents under Regulation (EC) No 1049/2001¹ regarding public access to European Parliament, Council and Commission documents (“the Regulation”), registered on 20/03/2013 under the above mentioned reference number.

We understand from your request that you would like to have access to the following documents:

- 1) list of meetings of DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and representatives of individual companies and/or industry federations such as BusinessEurope, the European Services Forum (ESF), the Federation of German Industries (BDI) and/or law firms such as Freshfields, White & Case, Herbert Smith, Lovells and Sidley, in which the EU's foreign investment policy, and in particular the EU-US investment policy was discussed between March 2012 and the date of your request;
- 2) Minutes and other reports of these meetings;
- 3) All correspondence (including emails) between DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and representatives of companies, business associations and law firms, in which the EU's foreign investment policy, and in particular the EU-US investment policy was discussed between March 2012 and the date of your request.

We have identified 43 documents (reports of meetings and correspondence) that fall under the scope of your request. On 28/05/2013 you have received a first batch of 18 documents. We are pleased to hereby send you a second and final batch of 25 documents.

2 of these documents can be released (20 and 36) with the exception of parts of text which do not relate to your request. 22 documents are partially covered by Article 4 of the Regulation and can only be partially released. 1 document is entirely covered by Article 4 of the Regulation and should be withheld. The assessment relating to these 23 documents is set out below.

Document 2: Report of the conference-call with Dan Lloyd from Vodaphone Group, 30/04/2012

¹ OJ L145, 31.05.2001, page 43

Parts of 1st and 3rd paragraph, 2nd, 4th and 5th paragraph contain information relating to the problems encountered by Vodaphone in India and its tactical approach towards these problems. Placing this information in the public domain could harm Vodaphone's commercial interests by impacting on its relations with India and undermine its position when tackling these issues (Article 4.2 of the Regulation). Parts of 2nd and 3rd sentence of 3rd paragraph and 4th paragraph cannot be disclosed as they provide information regarding the EU's tactical approach towards the ongoing FTA negotiations with India. Their disclosure could undermine the protection of its international relations (Article 4.1 third indent of the Regulation).

Document 3: Report of the meeting of Karel De Gucht with CEO of ENEL, 3/05/2012

Parts of 2nd, 3rd and 4th paragraph contain ENEL's assessment on the problems faced in a third country. Disclosure of this information would harm ENEL's commercial interests by impacting on its relations with the government concerned and exposing it to the risk of retaliation by officials who are responsible for the policies under discussion (Article 4.2 of the Regulation). Parts of paragraph 5 contain the EU's assessment of the internal situation in the country concerned. Disclosure of these parts could lead to a misleading interpretation of the EU's bilateral relations with that country. (Article 4.1 (a) third indent of the Regulation).

Document 4: Report of the meeting with REPSOL, 13/06/2012

Part of 1st sentence of 3rd paragraph contains information relating to REPSOL's relations with the Argentinean Government. The commercial interests of REPSOL would be undermined by disclosure of this information since it would impact on its relations with the Argentinean government (Art.4.2 of the Regulation).

Document 6: Report of the meeting with BDI, 04/09/2012

3rd and 4th sentence of 2nd paragraph contain information on a partner's negotiating position and Commission's negotiating strategy. Disclosure of this information would have an impact on the EU's relations with that country by impacting on its negotiating position (Article 4.1 (a) third indent of the Regulation).

Document 7: Flash report of the meeting of Karel de Gucht with REPSOL, 24/09/2012

Parts of 1st sentence and 5th sentence of 2nd paragraph, 6th sentence of 4th paragraph, 1st sentence of 5th paragraph and part of 6th sentence of 5th paragraph reveal the Commission's assessment of the internal situation in Argentina. Disclosure of this information could harm the EU's international relations since it could lead to a misleading interpretation of EU's bilateral relations with Argentina (Art 4.1 (a) third indent of the Regulation).

The 1st sentence of 3rd paragraph reveals REPSOL's assessment of the situation in Argentina. Disclosure of this information would risk undermining the protection of the commercial interests of REPSOL by impacting on its relations with the Argentinean Government (Art 4.2 of the Regulation).

Document 8: Report of the meeting with the European Round Table (ERT) on the BIT regulation, 25/09/2012

4th, 5th, 6th and 8th sentence of 3rd paragraph reveal positions taken by ERT in the course of FTA negotiations. The commercial interests of the Association members in the conclusion, implementation and enforcement of trade agreements as well as negotiation of future agreements could be undermined by disclosure of this information (Article 4.2 of the Regulation).

Document 9: Report of the follow-up meeting with REPSOL, 28/09/2012

2nd sentence of 2nd paragraph, 4th sentence of 3rd paragraph and part of 2nd sentence of 5th paragraph contain information relating to REPSOL's relations with the Argentinean Government. Disclosure of this information would harm REPSOL's commercial interests by impacting on its relations with the Argentinean government (Art.4.2 of the Regulation).

Part of 2nd sentence and 4th sentence of 6th paragraph contain information regarding a possible WTO dispute settlement or action within the International Financial Institutions. Revealing this information would risk undermining the protection of international relations of the EU by revealing information regarding the strategy to be adopted by the EU within the above mentioned organisations (Article 4.1 (a) third indent).

Document 10: Report of meeting with Business Europe and ESF on investment, 07/11/2012

Part of 2nd sentence, 3rd sentence, part of 6th sentence, part of 8th sentence and 11th sentence contain information regarding the EU's approach towards ongoing negotiations on investment. Disclosure of this information could have an impact on the EU's negotiating position and undermine its position when tackling the issue with negotiating partners (Article 4.1 (a) third indent).

Part of 1st sentence contains sensitive information relating to the EU's internal decision-making process with regard to ongoing negotiations. Disclosure of this information would seriously undermine the Commission's decision-making process, during the course and at the end of the negotiations (Article 4.3 of the Regulation).

The 14th sentence contains information on an open issue of negotiation and the positions of several Director Generals of the Commission on that issue. If revealed this information would seriously undermine the European Commission's decision-making process during the course and at the end of the negotiations (Article 4.3 of the Regulation).

The 5th, 9th, 10th, 12th, 13th and 16th sentence contain the positions taken by the industry in the course of ongoing negotiations. The commercial interests of the EU industry in the conclusion, implementation and enforcement of trade agreements as well as negotiation of future agreements could be undermined by the disclosure of this information (Article 4.2 of the Regulation).

Document 11: Report of the meeting with ESF on investment issues, 12/11/2012

Parts of 1st, 2nd, 3rd, 4th, 5th sentence of 3rd paragraph contain the Commission's assessment on the objectives and progress of negotiations with Canada. Placing this information in the public domain could harm the EU's international relations by undermining its negotiating position with that country (Article 4.1(a) third indent).

Parts of the 1st sentence, 2nd sentence of 4th paragraph contain the EU's assessment of the internal situation in a negotiating partner country. Disclosure of this assessment would risk undermining the

protection of the EU's international relations since it could lead to a misleading interpretation of the EU's bilateral relations with the country concerned (Article 4.1(a) third indent).

The 2nd, 3rd and 4th sentence of the 5th paragraph contain elements of the EU's political strategy with China. Disclosure of this information would risk undermining the international relations of the EU by having an impact on EU's relations with China and undermine its position when negotiating (Article 4.1(a) third indent).

Parts of the 1st, 2nd and 3rd sentence of 6th paragraph, parts of 1st and the 2nd sentence of 7th paragraph contain the EU's assessment of the internal situation of a third country as well as the EU and ESF positions and tactical approaches on the issues concerned. Disclosure of these parts of documents would risk putting the EU at a disadvantage when negotiating with the country in question (Article 4.1(a) third indent) and would risk undermining the commercial interests of ESF by revealing its commercial strategies and priorities (Art.4.2 of the Regulation).

The 2nd, 3rd, 4th sentence, part of the 1st sentence of 8th paragraph, 10th paragraph, 11th paragraph, 12th paragraph, 13th paragraph contain the EU's assessment on the state of play and objectives of ongoing and envisaged negotiations. Disclosure of this information would undermine the protection of international relations of the EU by impacting on its negotiating position towards the countries concerned (Article 4.1(a) third indent).

The 9th paragraph contains the assessment of ESF on cooperation between the Commission and Member States. Disclosure of this information would risk undermining the commercial interests of ESF by revealing its assessment of the EU's decision-making process (Art 4.3 of the Regulation).

Document 12: Report of the meeting with BDI, 13/11/2012

Parts of paragraph 2 contain information on the implications of Regulation 1219/2012 on investment negotiations with third countries. Disclosure of this information would risk undermining the EU's international relations by impacting on its negotiating position with the countries concerned (Article 4.1(a) third indent of the Regulation). Parts of paragraphs 2 and 3 reveal sensitive commercial strategies and priorities which are shared with the Commission in the context of negotiations. Disclosure of this information would undermine the protection of commercial interests of BDI members by impacting on the relationship of trust between the Commission and the industry, and BDI's interest in the conclusion, implementation and enforcement of trade agreements by revealing concerns and positions taken in the course of negotiations of such agreements (Article 4.2 of the Regulation) (Article 4.2 of the Regulation).

Document 13: Report of the meeting of the Business Europe Market Access Working Group, 14/11/2012

Part of the 2nd sentence of 3rd paragraph contains the objectives of the EU's investment negotiations with China. Putting this information in the public domain would risk undermining the protection of the EU's international relations by weakening its negotiating position with China (Article 4.1(a) third indent of the Regulation).

The 3rd, 4th, 5th and 6th sentence of 4th paragraph contain the Commission's assessment on the progress of ongoing negotiations and state of play for issues which remain open. Disclosing this information

would undermine the Commission's position when negotiating and tackling the specific issues mentioned (Article 4.1(a) third indent of the Regulation).

Part of the 5th paragraph reveals some concerns expressed by the industry with regard to the legislation of a third country and the Commission's position on that legislation. Disclosing this information would risk undermining the EU's position when tackling the issue with the negotiating partner concerned (Article 4.1(a) third indent of the Regulation).

The 6th paragraph contains concerns expressed by Business Europe with regard to the implications of Regulation 1219/2012 and ongoing investment negotiations. It is followed by the Commission's position on the points raised. Revealing this information would risk undermining the protection of the commercial interests of Business Europe in the conclusion, implementation and enforcement of trade agreements by revealing concerns and positions taken in the course of negotiations of such agreements (Article 4.2 of the Regulation). It would also risk undermining the protection of the EU's international relations by impacting on the Commission's position when negotiating with one of the negotiating partners concerned (Article 4.1(a) third indent of the Regulation).

Part of the 7th paragraph cannot be disclosed as it contains information on the EU's tactical position in ongoing investment negotiations. Disclosure of this information could harm the EU's international relations by undermining its position when tackling the issue with negotiating partners (Article 4.1(a) third indent of the Regulation).

Document 14: Report of the meeting with REPSOL's representatives meeting, 14/11/2012

This document contains sensitive information relating to REPSOL's relations with the Argentinean government. Disclosure of this document would risk undermining the commercial interests of REPSOL by impacting on its relations with the Argentinean government (Art.4.2 of the Regulation).

Document 15: Report of the meeting with EUROCHAMBERS on CETA, 12/12/2012

Part of 1st sentence, 2nd, 3rd, 4th and 5th sentence of paragraph 5, part of 1st sentence, 2nd, 3rd, 4th sentence of paragraph 6, 1st, 2nd, 3rd, 4th and 5th sentence of paragraph 7, part 1st sentence, 2nd sentence of paragraph 8, part of 1st sentence, 2nd and 3rd sentence of paragraph 11 contain information on investment negotiations with Canada. Disclosure of this information would risk undermining the protection of international relations of the EU by revealing information regarding its tactical approach towards these negotiations, which could have an impact on the EU's negotiating position towards Canada and undermine its position when tackling the issues mentioned (Article 4.1 (a) third indent). This information is linked to Eurochambers' commercial strategies and priorities. The protection of the commercial interests of Eurochambers and its members could be undermined as a result (Article 4.2 of the Regulation).

The 1st sentence and part of the 3rd sentence of paragraph 10, part of 1st sentence of paragraph 12 contain positions taken by Eurochambers in the course of negotiations with Canada. Disclosure of this information would risk undermining the commercial interests of Eurochambers and its members in the conclusion, implementation and enforcement of the agreement concerned (Article 4.2 of the Regulation).

Document 19: Report of the meeting with Business Europe on FDI screening, 7/03/2013

The 3rd and 4th paragraphs, the 1st and 6th sentence of the 5th paragraph contain the Commission's assessment of the internal situation in future negotiating partners. Disclosure of this information could lead to a misleading interpretation of EU's bilateral relations with the countries concerned (Article 4.1 (a), third indent of the Regulation). Moreover the deleted parts also contain the commercial priorities of Business Europe on the issue of FDI screening. The commercial interests of the Association and its members would be undermined by the release of this information (Article 4.2 of the Regulation).

Document 22: EABC "Atlantic Agenda" Recommendations for the EU-US High-Level Working Group on Jobs and Growth

The 1st paragraph contains EABC's suggested course of action for the EU-US High-level Working Group. Disclosure of the withheld information would risk undermining the commercial interests of the members of the Council in the conclusion, implementation and enforcement of a EU-US trade and investment agreement as well as negotiation of future agreements (Article 4.2 of the Regulation).

Others parts of the documents are not relevant to the present request and have been deleted.

Document 24: Letter from Huawei to Karel de Gucht

The 3rd sentence of 2nd paragraph, part of 1st sentence, 2nd sentence and 3rd sentence of 3rd paragraph, 1st and 2nd sentence of 4th paragraph, part of 1st, 2nd, 3rd, 4th and 5th sentence of 5th paragraph, part of 1st and 2nd sentence of 6th paragraph, part of 1st sentence of 7th paragraph contain sensitive business information, strategies and priorities. The commercial interests of Huawei would be undermined by the disclosure of this information (Article 4.2 of the Regulation).

Document 30: Letter of BDI to Director General for TRADE, 1/11/2012

Parts of the 2nd paragraph contain the assessment and positions taken by the industry in the course of investment negotiations with Canada, Singapore and India. The commercial interests of BDI and its members in the conclusion, implementation and enforcement of trade agreements as well as negotiation of future agreements could be undermined by the disclosure of this information (Article 4.2 of the Regulation).

Document 31: Letter of DIHK to Director General for TRADE, 8/11/2012

Parts of 2nd Paragraph, 4th paragraph and 5th paragraph contain the assessment and positions taken by the industry in the course of FTA negotiations with Canada, Singapore and India. The commercial interests of BDI and its members in the conclusion, implementation and enforcement of trade agreements as well as the negotiation of future agreements could be undermined by disclosure of this information. (Article 4.2 of the Regulation).

Document 33: Letter of EUROCHAMBRES to Director General for TRADE 21/11/2012

Parts of the 2nd sentence of 2nd paragraph and parts of 3rd and 4th paragraph contain concerns and positions taken by Eurochambres in the course of the negotiations with Canada. The commercial interests of Eurochambres and its members in the conclusion, implementation and enforcement of trade agreements as well as the negotiation of future agreements could be undermined by disclosure of this information (Art 4.1(a) third indent of the Regulation).

Document 34: Letter of Director General for TRADE to the Federation of German Industries, 28/11/2012

The 4th and 5th paragraph contain the Commission's assessment on ongoing investment negotiations. Revealing this information would risk undermining the protection of the EU's international relations by revealing the EU's tactical approach towards the negotiations concerned and impacting on its negotiating position (Art 4.1(a) third indent of the Regulation).

Document 35: Letter of Director General for TRADE to the Association of German Chambers of Industry and Commerce, 30/11/2012

The 4th paragraph contains the Commission's assessment on the ongoing FTA negotiations. Disclosure of this information would risk undermining the protection of the EU's international relations by revealing the EU's tactical approach towards the negotiations concerned and impacting on its negotiating position (Art 4.1(a) third indent of the Regulation). The withheld paragraph also contains the commercial strategies and priorities of the Association of German Chambers of Industry and Commerce. Disclosure of this information could harm the commercial interests of the Association by revealing the positions taken by the industry in the course of the negotiations concerned (Art 4.2 of the Regulation).

Document 37: Letter of Director General for Trade to EUROCHAMBRES, 19/12/2012

The 3rd paragraph contains the Commission's position on the issues raised by the industry. Disclosure of this information would risk undermining the protection of the EU's international relations by revealing the EU's tactical approach towards the negotiations concerned and impacting on its negotiating position (Art 4.1(a) third indent of the Regulation). Disclosure of this information would also seriously undermine the European Commission's decision-making process, during the course and at the end of the negotiations of the investment agreement (Art. 4.3 of the Regulation).

Document 43: Note for the file: Argentina - REPSOL expropriation: meeting with REPSOL on 6 March 2013 11/03/2013

The 2nd sentence of the 4th paragraph contains REPSOL's assessment of actions by the Argentinian Government. Disclosure of this information could harm REPSOL's commercial interests by impacting on its relations with the Argentinean Government (Article 4.2 of the Regulation).

Part of the 2nd sentence of 7th paragraph contains information on an ongoing ICSID arbitration proceeding to which REPSOL is a Party. Disclosure of this information would harm its commercial interests in Argentina (Article 4.2 of the Regulation)

The last sentence of the 9th paragraph and 17th paragraph contain discussions on possible actions by the Commission to support REPSOL and further exchange on the implications for EU's investment policy. Disclosure of this information would risk undermining the protection of EU's international relations since it could lead to a misleading interpretation of EU's bilateral relations with Argentina. (Article 4.1(a) third indent of the Regulation).

The 12th, 13th and 14th paragraph contain sensitive and confidential business information relating to the business results of REPSOL. Disclosure of this information would seriously harm the commercial

interests of REPSOL by putting it at a disadvantage towards its competitors (Article 4.2 of the Regulation).

We have also considered whether the risks attached to the release of these documents are outweighed by the public interest in accessing the requested documents (Article 4.2 and 4.3 of the Regulation). We do not believe this to be the case.

Please note that these documents cannot be reproduced or disseminated for commercial purposes without prior consent given by the Commission.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at 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

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized 'X' or 'J' shape followed by a long horizontal stroke.

Jean-Luc DEMARTY