



EUROPEAN COMMISSION

Directorate-General for Trade

The Director General

Brussels, 11 December 2014

Trade/dga2.e.1 (2014) 4011311

By registered mail:

Mr Olivier Hoedeman

Corporate Europe Observatory (CEO)

Rue d'Edimbourg 26

B – 1050 Brussels

By email:

ask+request-473-06cb5b10@asktheeu.org

Dear Mr Hoedeman,

Subject: Document request pursuant to Regulation (EC) No 1049/2001 (GESTDEM 2013/2132)

Thank you for your request Gestdem 2013/2132, registered on the 19 April 2013, for access to documents under Regulation No 1049/2001¹ regarding public access to European Parliament, Council and Commission documents ("the Regulation").

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

- 1) minutes and other reports of meeting of DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and representatives of individual companies, including lobby consultancies and law firms, and/or industry associations, in which the upcoming trade negotiations with the US were dealt with between the 1 January 2012 and the 19 April 2013);
- 2) all correspondence (including emails) between DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and representatives of individual companies (including lobby consultancies and law firms) and/or industry associations, in which the upcoming trade negotiations with the US were dealt with between the 1 January 2012 and the 19 April 2013.

On the 17 July 2013 we have sent you a list of meetings where EU-US trade negotiations have been discussed. In addition, on the 4 October 2013, we have sent you the 1st batch of 85

¹ OJ L 145, 31.5.2001, p. 43.

documents that had been fully released. On the 8 of January 2014 we have sent the 2nd batch of 44 documents and on 12 June 2014 the 3rd batch of 40 documents.

I am pleased to send you the 4th and last batch of 25 documents corresponding to the second part of your request. You will find a list of documents identified annexed to this reply (Annex D).

Out of the 25 documents we are pleased to grant you:

- Full access to 11 documents (1, 3, 4, 5, 6, 10, 11, 13, 20, 24 and 25) ;
- Partial access to 14 documents out of which:
 - 13 documents (2, 8, 9, 12, 14, 15, 16, 17, 18, 19, 21, 22 and 23) are fully released except for the details (i.e. name and position) of our interlocutors which have been removed in application of the exception concerning the privacy of an individual (Article 4.1(b) of the Regulation). Consequently only the name of the industries and/or companies with whom the correspondence took place are released; and
 - 1 document (7) is covered partially by Article 4.1(b) and other exceptions foreseen in Article 4 of the Regulation, namely Art. 4.1(a) third indent (protection of international relations) and Article 4.2 first indent (protection of commercial interests of a natural or legal person).

Please note that parts of some of these documents have been removed for not being relevant to your request.

Concerning the application of Article 4.1(b) on the protection of privacy and the integrity of the individual, please note that when access is requested to documents concerning personal data, Regulation (EC) No 45/2001² becomes fully applicable³. According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced. We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested expunged from this personal data. If you wish to receive these personal data, we invite you to provide us with arguments showing the need for having these personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data should be disclosed.

² OJ L8 of 12.1.2001, p.1

³ Judgement of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, not yet reported.

In case of the document 7, we had to redact parts of it, because their release would undermine the protection of international relations of the EU and the protection of commercial interests of SEA Europe.

Document 7 contains information shared by SEA Europe on the political and economic situation in United States of importance to maritime industry. This information was provided to support the Commission negotiating strategy in the EU-US trade negotiations. By releasing this information we would put the SEA Europe in a difficult situation as regards the cooperation with industry associations and regulators in the US market, as well as exposing them to the risk of retaliation by regulators and officials who are responsible for the policies under discussion or whose comments and actions are being shared with the Commission by the industry association on a confidential basis.

Furthermore, this information is used by the Commission in developing its negotiating strategy, which will continue to be relevant until the negotiations have been closed. By releasing the undisclosed parts of the document 7 we would be releasing the Commissions strategy that needs to be protected.

In the case T-301/10 Sophie in 't Veld v European Commission in para 120 court has confirmed that *'initiating and conducting negotiations in order to conclude an international agreement fall, in principle, within the domain of the executive, and that public participation in the procedure relating to the negotiation and the conclusion of an international agreement is necessarily restricted, in view of the legitimate interest in not revealing strategic elements of the negotiations (Case T-529/09 in 't Veld v Council [2012] ECR II-0000, paragraph 88; see also paragraph 57 and the end of paragraph 59 of the judgment).'*

Indeed, as the General Court recognised in case T-301/10⁴, *the negotiation of international agreements can justify, in order to ensure the effectiveness of the negotiation, a certain level of discretion to allow mutual trust between negotiators and the development of a free and effective discussion. [...] [A]ny form of negotiation necessarily entails a number of tactical considerations of the negotiators, and the necessary cooperation between the parties depends to a large extent on the existence of a climate of mutual trust.*

For these reasons, access to the parts of the document 7 has to be refused based on the exceptions defined in Articles 4(1)(a), third indent and 4(2), first indent of Regulation 1049/2001, as their release would result in a real and non-hypothetical risk to the commercial interest of SEA Europe and the international relations of the EU protected by those provisions.

The exceptions laid down in Article 4.2 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

⁴ Judgment of the General Court of 19 March 2013 in case T-301/10, Sophie in 't Veld v European Commission, paragraph 119.

evidence. On the contrary, the prevailing interest in this case rather lies in protecting the commercial interests of the companies concerned.

We hope this information will meet your needs. I must, however, remind you that these documents cannot be reproduced or disseminated for commercial purposes unless the European Commission has first been consulted.

If you would like the position taken by our service to be reviewed, you should write to the Commission's Secretary-General at the address below, confirming your initial request. In accordance with Article 7.2 of the Regulation, 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 fifteen working days from the registration of your confirmatory request, either granting you access to the document 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 Brussels

Or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized 'X' shape with a long horizontal stroke extending to the right.

Jean-Luc DEMARTY

Enclosures:

Annex 1 – List of meeting reports with industry
Twenty five documents (sent via e-mail only)