



EUROPEAN COMMISSION  
Directorate-General for Trade

The Director General

Brussels, **- 8 OCT. 2014**  
Trade/B2/Ares (2014)/2663436

Ms Pia Eberhardt  
Corporate Europe Observatory  
Cranachstraße 48  
50733 Cologne  
Germany  
via [www.asktheeu.org](http://www.asktheeu.org)

**Subject: Request for access to documents – Ref GestDem 2014/2573**

Dear Ms Eberhardt,

Thank you for your request for access to documents under Regulation (EC) No 1049/2001<sup>1</sup> 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 the following documents:

- 1) List of meetings of DG Trade officials and/ or representatives (including the Commissioner and the Cabinet) with stakeholders, including individual companies, law firms, arbitrators and industry associations, in which the EU-China investment negotiations were discussed (between 01 September 2013 and today)
- 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 stakeholders, including representatives of companies, business associations, law firms and individual arbitrators, in which the EU-China investment negotiations were discussed (between 01 September 2013 and today)
- 4) Studies and reports that fed into the Commission's own impact assessment of the EU-China investment relations (SWD(2013) 185 final), including the one by Copenhagen Economics (2012), the results of the business survey conducted by Copenhagen Economics during which around 1000 companies were conducted as well as the report of the joint fact finding mission to China by Copenhagen Economics and DG Trade in May 2011.

---

<sup>1</sup> OJ L145, 31.05.2001, page 43

We have identified nineteen documents (minutes of meetings and correspondence) as falling under the scope of your request. Document 1 and 2 were subject to your previous request for access to documents with reference number Gest Dem 2013/6482, therefore are not attached to this reply.

Having examined the remaining 17 documents under the provisions of the Regulation, we are pleased to grant you:

- **Full access to 3 documents (10, 11 and 19).**

Please note, that the document 19, the EU- China Investment Study by Copenhagen Economics, is available on the internet at the following link:

[http://ec.europa.eu/governance/impact/ia\\_carried\\_out/cia\\_2013\\_en.htm#trade](http://ec.europa.eu/governance/impact/ia_carried_out/cia_2013_en.htm#trade):

Document 10, Report of the Civil Society Dialogue event on 'EU-China Trade and Investment Relations: State of Play', is available on the internet as well:

[http://trade.ec.europa.eu/doclib/docs/2014/june/tradoc\\_152627.pdf](http://trade.ec.europa.eu/doclib/docs/2014/june/tradoc_152627.pdf);

- **Partial access to 12 documents (3, 4, 5, 6, 7, 8, 12, 13, 14, 15, 16, and 17);**
- **No access can be granted to 2 documents (9 and 18).** In accordance with Article 4.6 of the Regulation the possibility of granting partial access to these two documents has also been examined. However, it is considered that, as all parts of these documents are covered by the invoked exceptions, no such access can be granted.

The withheld (parts of) requested documents are covered by one or more exceptions provided in Article 4 of the Regulation and therefore have been withheld on the basis of the following assessment:

### **Protection of international relations**

Article 4(1)(a), third indent of the Regulation provides that the institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards international relations.

The withheld parts of the documents **4, 6, 9, 13, 14, 15, 17 and 18** contain elements of the EU's assessment of the political and economic situation in China as well as EU's strategic and tactical approach on the trade relations with China in these negotiations and beyond.

Public access to the undisclosed parts would reveal positions taken and statements made by participants in the preparatory meetings and other information shared between the participants in view of reaching the objectives set by the EU as regards the EU-China investment agreement. It is essential for negotiations like these to ensure a level of confidentiality for the negotiating parties, as the General Court recognised in its *in 't Veld* judgment.<sup>2</sup> In that judgment the General Court decided that *the negotiation of international agreements can justify, in order to ensure the effectiveness of the negotiation, a certain level*

---

<sup>2</sup> Judgment of the General Court of 19 March 2013 in case T-301/10, *Sophie in 't Veld v European Commission* (hereinafter T-301/10).

*of discretion to allow [...] the development of a free and effective discussion.*<sup>3</sup> It continued considering that *any form of negotiation necessarily entails a number of tactical considerations of the negotiators.*<sup>4</sup> Disclosing the redacted parts, and thus revealing certain tactical considerations on the side of the Commission, would undermine the margin of manoeuvre of the Commission that must explore all possible options in the context of these negotiations free of external pressure.

Furthermore, such discretion is also required to safeguard the mutual trust between the negotiating parties, which is an essential precondition for the success of the negotiations. Indeed, some of the documents requested include direct and indirect references to the negotiation positions and tactics of China (documents 6 and 9) and our assessment of those positions. Release of the latter position would undermine the trust of the Chinese in the confidentiality of the negotiations, and therefore also the chances of reaching successful negotiation results.

Finally, disclosing the redacted parts, and thus revealing certain tactical considerations on the side of the Commission, would undermine the margin of manoeuvre of the Commission that must explore all possible options in the context of these negotiations free of external pressure. Subsequently, the negotiation power of the EU would be affected and the EU's position in these negotiations would be weakened, which in turn would complicate these negotiations and, through this same mechanism, damage the protection of the public interest as regards international relations.<sup>5</sup>

### **Protection of the privacy and the integrity of the individual**

Article 4(1)(b) of the Regulation provides that the institutions shall refuse access to a document where disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with the EU legislation regarding the protection of personal data.

Pursuant to Article 4(1)(b) of the Regulation, access to a document has to be refused if its disclosure would undermine the protection of the privacy and integrity of the individual, in particular in accordance with the EU legislation regarding the protection of personal data. The applicable legislation in this field is Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>6</sup>.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable<sup>7</sup>. 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.

---

<sup>3</sup> T-301/10, § 119.

<sup>4</sup> Ibid.

<sup>5</sup> T-301/10, § 123.

<sup>6</sup> OJ L 8 of 12.1.2001, p. 1

<sup>7</sup> Judgement of CJUE of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd*, European Data Protection Supervisor, case C-28/08 P, OJ C 79 of 29.03.2008

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 **(3, 4, 6, 7, 8, 9, 12, 13, 14, 15, 17 and 18)** 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.

### **Protection of commercial interests**

Article 4(2), first indent of the Regulation provides that the 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.

We have withheld (parts of) the documents **3, 5, 6, 8, 9, 12, 15, 16, 17 and 18** as their disclosure would undermine the protection of commercial interest of a legal person. In the context of the ongoing negotiations of the EU-China investment agreement industry has shared with the Commission their assessment of an economic situation and market access problems in China as well as commercial priorities and strategies that European companies pursue in the country's market. If released, this information would harm relations that these organisations have with the Chinese government and regulators, at the same time exposing EU exporters to the risk of retaliation by regulators and officials who are responsible for the policies under discussion.

This information was shared with the Commission in confidence in order to support the EU's objectives of the EU-China investment agreement, as explained above. By revealing this business sensitive information they have shared we would risk undermining the protection of the commercial interests of a company or the members of a business association, working with the Commission to effectively support EU exporters in those markets.

### **Overriding public interest**

The exceptions laid down in Article 4.2 of the Regulation must be waived if there is an overriding public interest in disclosing the requested documents. Accordingly, the presence of an overriding public interest in disclosure has also been assessed. In the present case, there is no such evidence.

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.

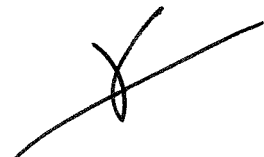
The Secretary-General will inform you of the result of this review within fifteen working days from the registration of your confirmatory request, either granting you access to the

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  
[sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Jean-Luc DEMARTY