



EUROPEAN COMMISSION
Directorate-General for Trade

The Director General

Brussels, 6 May 2014
Trade/dga2.e.1 (2014) 443874

Mr Paul de Clerck
Friends of the Earth Europe

By email only:
paul@milieudefensie.nl

Dear Mr de Clerck,

Subject: Document request pursuant to Regulation (EC) No 1049/2001 (GESTDEM 2014/0884)

Thank you for your request Gestdem 2014/0884, registered on 18 February 2014, 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:

- a) The text of the EU's negotiation mandate;
- b) The text of the EU's positions on regulatory cooperation, ISDS, the chemical sector, food safety, sustainable development and energy as disclosed to the Government of the United States;
- c) Any other reports or papers provided to the US by the EU on the topics identified above in b);
- d) Any reports or papers provided to EU Member States and the European Parliament on the topics identified in b) above.

We regret to inform you that most of the documents requested, with the exception (see below) of certain documents under b), which are already publically available, are covered by the exception set out in Article 4.1 (a) third paragraph of the aforementioned Regulation and therefore cannot be made available to you. Making public these documents could weaken the negotiating position of the EU in the negotiations with the United States and therefore compromise the protection of the EU international relations.

¹ OJ L 145, 31.5.2001, p. 43.

While the EU holds dear the principles of transparency, a certain level of discretion and special care in handling negotiating documents is in our view necessary in order to allow mutual trust between negotiators. The success of the negotiations depends to a large extent on the protection of objectives, tactics and fallback positions of the parties involved. In addition, as the negotiations are ongoing, the publication of these documents would also be likely to prejudice the decision-making process of the EU pursuant to Article 4.3 paragraph 1 of Regulation 1049/2001.

In a recent speech EU Trade Commissioner Karel De Gucht addressed the issue of how the EU is engaging with people on the negotiations and on the required confidentiality to conduct such negotiations. Should you be interested, the speech, is available at:
http://trade.ec.europa.eu/doclib/docs/2014/january/tradoc_152075.pdf

Concerning point a) of your request on the text of the EU's negotiation mandate please note that it is a Council document and therefore it is not for the Commission to decide on its disclosure. The Commission is ready, as already expressed by Commissioner Karel De Gucht to support the publication of the mandate should Council so decide.

Concerning point b) of your request, I would like to refer you to the EU initial TTIP Position Papers published on 16 July 2013. These position papers are the technical documents that the EU presented to our American counterparts during the first negotiating round that took place from 8 to 12 July 2013 in Washington. They cover the following areas:

- Cross-cutting & institutional provisions on regulatory issues
- Technical barriers to trade
- Sanitary and Phytosanitary measures
- Public Procurement
- Raw materials and energy
- Trade and sustainable development

These papers as well as other documents that will be made public in the course of the negotiations are available at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=943>.

In particular concerning your request for the EU position paper on ISDS, and as an example of the public engagement in the negotiations, let me draw your attention to the public consultation on a possible approach to investment protection and ISDS in the TTIP that the European Commission has launched on 27 March. The consultation will be accompanied by legal provisions for the investment part of the TTIP talks and will include sections on investment protection and on ISDS. All relevant information is at your disposal behind the following link <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1052>.

To conclude, and in addition to the initial position papers, you may also find interesting the following documents:

- "The core of TTIP: Tackling regulatory issues" which explains what the EU and the US intend to achieve in the "regulatory part" of Transatlantic Trade and Investment Partnership (TTIP);

- Fact sheet on Investment Protection and Investor-to-State Dispute Settlement in EU agreements

Both documents are available at <http://ec.europa.eu/trade/policy/in-focus/ttip/resources/>

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 Bruxelles

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

Yours sincerely,



Jean-Luc DEMARTY