



EUROPEAN COMMISSION

Directorate-General for Trade

Directorate E Neighbouring countries, USA and Canada
The Director

Brussels, 5 July 2013

LDC

L. Daniel Mullaney
Assistant United States Trade
Representative For Europe and the
Middle East
Chief US negotiator for TTIP

Subject: Arrangements on TTIP negotiating documents

Dear Mr. Mullaney:

In preparation for the initiation of negotiations on a Transatlantic Trade and Investment Partnership (TTIP) Agreement, I would like to inform you of the arrangements that the EU has in place for the protection of negotiating documents, given the sensitive nature of their content. While the EU holds dear to the principles of transparency, a certain level of discretion and special care in handling these documents is in our view necessary in order to allow mutual trust between negotiators and for each side to preserve positions taken for tactical reasons against third countries with which we are or could be negotiating in the future.

EU institutions must comply with Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents under which all documents of the institutions of the EU are accessible to the public. Article 4 of this regulation, however, sets out certain exceptions to the general policy of providing access to documents, which are applied in specific circumstances when justified notably for the protection of public interest as regards, for example, international relations. Following discussions with the U.S. side, in the case of the negotiations for a TTIP Agreement:

a) All documents related to the negotiation or development of the TTIP Agreement, including negotiating texts, proposals of each side, accompanying explanatory material, discussion papers, emails related to the substance of the negotiations, and other information exchanged in the context of the negotiations, are provided and will be held in confidence, in accordance with EU law and relevant procedures.

b) As regards the handling of the documents referred to above we consider that, in so far as they are not classified within the meaning of that term in the EU, such documents (which would be marked as "Limited") must be held in confidence, but can normally be mailed, e-mailed, faxed, or discussed over unsecured lines with the groups of people mentioned in paragraph (d) and the U.S. side. Persons in possession of these documents can store them in a locked file cabinet or within a secured building; that is, the documents do not need to be stored in safes. These documents can be created and stored on computer systems that are not subject to special security measures. However, depending on the sensitivity of their content,

we may choose to increase the level of protection of particular documents when they are circulated on the EU side between the persons identified in paragraph (d) below, notably by classifying them as "RESTREINT UE", in accordance with Commission rules on classification and handling of classified information (Decision 2001/844) and apply more secure handling requirements on our side.

c) Under these procedures, we will appropriately mark or, where appropriate, classify the documents in a manner that makes clear that the documents are sensitive, must be held in confidence and handled according to the rules and guidelines applicable to such documents.

d) On the EU side, documents related to the negotiations may be provided only to (1) officials, or Members of the European Commission, Council of the European Union, European Parliament and officials of the EU Member States, and (2) persons outside these EU institutions who are entitled to be fully informed of the state of play of the negotiations. Anyone provided access to the documents will be informed that they are not permitted to share the documents with persons who are not authorized to see them. Depending on the sensitivity of the document, we may limit circulation of certain documents to a more restricted number of persons.

(e) Finally, when persons or groups other than those specified above, seek access to documents described in paragraph (a), the exceptions to public access set out in Article 4 of Regulation 1049/2001 apply as long as the protection is justified on the basis of the content of a document, up to 30 years. While the application of any exception, including its continued application over time, shall be assessed on a case-by-case basis, depending on the content of the documents, the European Commission when using the exception for foreign relations will consult with the third-party, in this case the United States, regarding release of information described in paragraph (a) in order to assist it in coming to a view on the (continuing) sensitivity of the document.

(f) I take this opportunity to inform you that the European Commission may decide to make public certain documents that will reflect exclusively the EU position on these negotiations, after consulting the U.S. side. To the extent that such documents have been shared with the US side as set out in the previous paragraphs, we would not expect the US to hold them in confidence as of the date of their publication.

I would be grateful if you could inform us of the procedures to protect sensitive information applicable on your side. The content of the present letter will be shared with the other EU institutions and made public.

Sincerely,



Mr. Ignacio Garcia Bercero
Director, Neighboring Countries, USA and Canada
Directorate-General for Trade, European Commission
Chief EU negotiator for TTIP