

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

July 5, 2013

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

Dear Mr. Garcia Bercero:

As we prepare for the initiation of negotiations on a Transatlantic Trade and Investment Partnership (TTIP) Agreement, I would like to thank you for your letter of July 5, 2013, describing the arrangements that the European Union (EU) has in place for the protection of negotiating documents, given the sensitive nature of their content and that apply in the context of negotiations for a TTIP Agreement. I take this opportunity to inform you of the arrangements that the United States will apply for the protection of TTIP negotiating documents, given the sensitive nature of their content. Transparency is an important principle for the Obama Administration, just as it is for the EU. However, given the sensitive nature of the content of the documents related to the negotiations for a TTIP Agreement, the United States also shares the EU's view that a certain level of special care in handling these documents is necessary to enable mutual trust between negotiators and for each side to preserve positions taken for tactical reasons with regard to third countries with which we are or could be negotiating in the future.

The U.S. Government must comply with the Freedom of Information Act (FOIA) with regard to providing the public access to information. FOIA includes exemptions from providing the public with access to certain information, for example information classified pursuant to Executive Order 13526 of December 29, 2009, which authorizes confidential treatment of foreign government information.

To that end and in light of arrangements described in your letter, the United States is implementing the following procedures:

- (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, e-mails related to the substance of the negotiations, and other information exchanged in the context of the negotiations, are shared in confidence and will be held in confidence, in accordance with Executive Order 13526.
- (b) While the documents specified in paragraph (a) are to be held in confidence the documents can be mailed, e-mailed, faxed, or discussed over unsecured lines with the groups of people mentioned in paragraph (d) and the EU 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.

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- (c) Documents will be marked in a manner that makes clear that the documents will be held in confidence and treated as specified in paragraph (a). The United States will mark documents as “Confidential, Foreign Government Information—Modified Handling Authorized” and include a brief instruction on handling the documents.
- (d) For the U.S. side, this means that documents containing such information may be provided only to (1) U.S. government officials, and (2) persons outside the U.S. Government who participate in its internal consultation process and who have a need to review or be advised of the information in these documents. 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.
- (e) The United States will hold the TTIP documents in confidence for five years after entry into force of the TTIP Agreement, or if no agreement enters into force, for five years after the last round of negotiations. If the United States seeks to release documents described in paragraph (a) in advance of these dates, for example, in response to a request for access under the FOIA, the United States will consult with the European Commission regarding the continued sensitivity of the document. The United States will also notify the European Commission in the event the United States extends the period before the document is released.

Even as we outline the confidentiality procedures for these vital negotiations, certainly we are both aware of the concurrent need for public engagement and transparency to the fullest extent consistent with our efforts to successfully reach an agreement. Recognizing this, the procedures outlined in this letter should be subject to review and possible change, pursuant to discussion in advance of the implementation of any adjustments to confidentiality provisions.

I look forward to working with you towards the conclusion of a strong TTIP agreement that will realize the high objectives set out in the Final Report of the High Level Working Group to our respective leaders.

Sincerely,



L. Daniel Mullaney
Assistant United States Trade Representative
For Europe and the Middle East