

United States Senate

WASHINGTON, DC 20510

Feb 26, 2015

The Honorable Michael Froman
Ambassador
United States Trade Representative
600 17th Street NW
Washington, D.C. 20508

Dear Ambassador Froman,

The Trans-Pacific Partnership (TPP) is the largest Free Trade Agreement in the history of the United States. Its member states account for 40% of the world's GDP and roughly \$1.74 trillion of trade in goods and services, as of 2012. Unlike the trade agenda throughout most of American history, modern trade agreements are not just about tariffs. They now encompass enormously complex international conventions that impact the exchange of goods, capital flows, services, intellectual property, data, cyber-espionage and privacy.

As such, we remain deeply concerned that representatives of special interests and multinational corporations have broad and deep access to the negotiating texts, while democratically elected officials and their designees do not. The United States Trade Representative (USTR) has afforded over 400 representatives of special interests and corporations the opportunity to develop negotiating objectives and access confidential information that is not available to the general public, or their elected representatives. Thus, it is critical that experts across Congress, the government, and civil society have the opportunity to analyze these complex potential United States commitments.

You contend that the USTR cannot negotiate without absolute secrecy over its negotiating texts and legal offers. Yet there is a current example of a negotiating mechanism far more transparent than that practiced by this administration. Last year, the European Commission took a series of actions to make its negotiations with the United States over the Transatlantic Trade and Investment Partnership (TTIP) more open to its own citizens and legislatures.

The European Commission published certain textual proposals, position papers, and fact sheets it has tabled in the negotiations. These texts are available to members of parliament across the European Union, as well as to the public through the European Commission's web site. In fact, most Americans have much broader access to what the European Commission is seeking in its trade pact with the United States than they do to what their own government is negotiating on their supposed behalf.

According to the European Commission, the proposals that were published cover "competition, food safety and animal and plant health, customs issues, technical barriers to trade, small and medium-sized enterprises (SMEs), and government-to-government dispute settlement."ⁱ The Commission pledged to "continue publishing and updating on a regular basis a public list of TTIP documents shared with the European Parliament and the Council."ⁱⁱ

For your reference, we have included a comparison of what the European Commission has released publicly on its website dedicated to TTIP materials with what we have found that USTR has comparatively released.

The current mechanism to share information with Congress and the public seems insufficient. As we understand it, current practice is to share redacted negotiating texts with members of Congress under the condition that USTR representatives are in the room. Members are not allowed to have their own staff, experts, or designees in the room to review the text with them or ask questions, nor can they take notes or retain copies of texts. Because of these constraints, the scheduling time to review chapters of these agreements can take weeks or even months.

For long agreements that require deep expertise in multiple economic and legal domains, these conditions are absurd. They amount to a practical prohibition on members of Congress understanding what is being negotiated. Of course, USTR may vary practices for different members or parties, but since USTR would not provide and may not have internal guidelines on its information-sharing practices, we cannot know whether there is favoritism or arbitrary treatment of parties seeking to review trade text.

USTR contends that it cannot negotiate a trade agreement effectively in public. The European transparency initiative suggests otherwise. If the European Commission can do it, so can USTR. Congress negotiates complex legislation using open processes; there is no reason why the USTR could not do so as well.

Therefore, we request that you follow the European precedent and make the “specific proposals for legal text” in the trade negotiation process for the TPP, TTIP, and other pending draft agreements accessible to the public.ⁱⁱⁱ We also reiterate the earlier request that USTR release its internal guidelines on how it shares information and with whom.

Secrecy might have made sense when the sole issue was how and whether to raise or lower tariff rates, but when the issues cut across virtually every major industrial and economic question facing our culture and potentially bind U.S. statutes and regulations, we need more than that. It is simply unacceptable that foreign officials and private lobbyists can read our own government’s position papers and legal text proposals on trade, when our own lawyers, experts, and constituents cannot.

Sincerely,



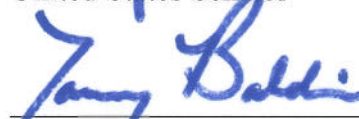
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Appendix: Transparency Policy Regimes Compared

This appendix is a comparison of transparency policies between the European Commission and the United States Trade Representative over the exact same trade agreement, the Transatlantic Trade and Investment Partnership (TTIP). The agreement will have 24 chapters. The European Commission has released 8 textual proposals, as well as 15 position papers. The European Commission “intends to publish further texts and proposals in the course of the negotiations, as they become available.”

By contrast, the US Trade Representative has no public guidelines on how or what it proposes to share with the public. On the USTR website, there are generic descriptions of the issues that USTR seeks to address in the trade agreement, usually a few paragraphs long with no specific goals. There are also references to longer discussions of how USTR seeks to address specific issues in its generic approach to trade. USTR also shares information with sector-specific advisory groups, but it is unclear what advisory groups receive. These advisory groups are exempt from the disclosure requirements of the Federal Advisory Committee Act, and USTR has not shared internal guidelines on information sharing in response to a Senate inquiry.

	European Commission Legal Text of Tabled Offer	European Commission Position Paper or Fact sheet with Goals	United States Trade Representative Legal Text of Tabled Offer	United States Trade Representative Position Paper or Fact sheet
Food Safety and Animal and Plant Health (SPS)	Released	Released fact sheet with specific negotiating objectives	No release or stated planned release	A fact sheet with a summary of the issue area and a list of non-specific goals
Technical Barriers to Trade (TBTs) in TTIP	Released	Released fact sheet with specific negotiating objectives	No release or stated planned release of text	A fact sheet with a summary of the issue area and a list of non-specific goals
Customs and Trade Facilitation in TTIP	Released	Released fact sheet with specific negotiating objectives	No release or stated planned release of text	A summary of the issue area and a list of non-specific goals
SMEs in TTIP	Released	Released fact sheet with specific negotiating objectives	No release or stated planned release of text	A summary of the issue area and a list of non-specific goals
Competition in TTIP – Anti-trust and Mergers	Released	Released fact sheet with specific negotiating objectives	No release or stated planned release of text	A summary of the issue area and a list of non-specific goals
Competition – State-Owned Enterprises (SOEs)	Released	Released fact sheet with specific	No release or stated planned release of text	A summary of the issue area and a list of non-specific goals

		negotiating objectives		
Competition – Subsidies	Released	Released fact sheet with specific negotiating objectives	No release or stated planned release of text	A summary of the issue area and a list of non-specific goals
Government-Government Dispute Settlement (GGDS)	Released	Released fact sheet with specific negotiating objectives	No release or stated planned release of text	A summary of the issue area and a list of non-specific goals
Trade in Goods and Customs Duties	Likely not to release tariff opening offer	Released fact sheet with specific negotiating objectives	No release or stated planned release of text	A summary of the issue area and a list of non-specific goals
Services	Likely not to release services opening offer	Released position paper	No release or stated planned release of text	A summary of the issue area and a list of non-specific goals
Investment Protection and Investor-State Dispute Settlement (ISDS)	Likely not to release investment opening offer, with a parallel public process at work	Released position paper	No release or stated planned release of text	A summary of the issue area and a list of non-specific goals
Public Procurement	Likely not to release procurement opening offer	Released position paper	No release or stated planned release of text	A summary of the issue area and a list of non-specific goals
Regulatory Coherence	Proposed legal text of its offer available early 2015	Released fact sheet with specific negotiating objectives	No release or stated planned release	A summary of the issue area and a list of non-specific goals
Chemicals	Proposed legal text of its offer may be available after it is tabled*	Released fact sheet and position paper	No release or stated planned release	No specific information released on the TTIP related web subsection
Cosmetics	Proposed legal text of its offer may be available after it is tabled*	Released fact sheet and position paper	No release or stated planned release of text	No specific information released on the TTIP related web subsection
Engineering	Proposed legal text of its offer may be	Released fact sheet and position paper	No release or stated planned release of text	No specific information released on the

	available after it is tabled*			TTIP related web subsection
Medical Devices	Proposed legal text of its offer may be available after it is tabled*	Released fact sheet and position paper	No release or stated planned release of text	No specific information released on the TTIP related web subsection
Information and Communication Technology	Proposed legal text of its offer may be available after it is tabled*	Released fact sheet with specific negotiating objectives	No release or stated planned release of text	A summary of the issue area and a list of non-specific goals
Pharmaceuticals	Proposed legal text of its offer may be available after it is tabled*	Released fact sheet with specific negotiating objectives	No release or stated planned release of text	A summary of the issue area with a list of non-specific goals
Textiles	Proposed legal text of its offer may be available after it is tabled*	Released fact sheet with specific negotiating objectives	No release or stated planned release of text	No specific information released on the TTIP related web subsection
Vehicles	Proposed legal text of its offer may be available after it is tabled*	Released fact sheet with specific negotiating objectives	No release or stated planned release of text	No specific information released on the TTIP related web subsection
Sustainable Development	Proposed legal text of its offer may be available after it is tabled*	Released fact sheet and position paper	No release or stated planned release of text	No specific information released on the TTIP related web subsection
Energy and Raw Materials	Proposed legal text of its offer available after it is tabled*	Released fact sheet and position paper	No release or stated planned release of text	No specific information released on the TTIP related web subsection
Intellectual Property (IP) and Geographical Indications (GIs)	Proposed legal text of its offer may be available after it is tabled*	Released fact sheet with specific negotiating objectives	No release or stated planned release of text	A summary of the issue area with a list of non-specific goals

* The European Commission transparency statement of November, 2014 references general guidelines on which documents it will and will not release. In some cases, there is no textual offer and negotiations are based on fact sheets and position papers. The EC will not preclude the release of future textual offers.

The [EU will make] “public all the EU negotiating texts that the Commission already shares with Member States and Parliament (e.g. formal negotiating proposals on the "rules" part of the trade agreement). However, there should be no intention to publish any US documents or common negotiating documents without the

explicit agreement of the US. The EU market opening offers on tariffs, services, investment and procurement should not, in principle, be made public either, as they are the essence of the confidential part of the negotiations.”^{iv}

ⁱ European Commission press release, January 7, 2015 “European Commission publishes TTIP legal texts as part of transparency initiative” http://europa.eu/rapid/press-release_IP-15-2980_en.htm

ⁱⁱ See page 3 of the European Commission document, November 11, 2014 “Communication to the Commission Concerning Transparency in the TTIP Negotiations” http://ec.europa.eu/news/2014/docs/c_2014_9052_en.pdf

ⁱⁱⁱ European Commission press release, January 7, 2015 “European Commission publishes TTIP legal texts as part of transparency initiative” http://europa.eu/rapid/press-release_IP-15-2980_en.htm

^{iv} See page 2 of the European Commission document, November 11, 2014 “Communication to the Commission Concerning Transparency in the TTIP Negotiations” http://ec.europa.eu/news/2014/docs/c_2014_9052_en.pdf