

To: Catherine Ashton, European Commissioner for Trade
José Manuel Barroso, President of the European Commission
Margot Wallström, Vice President of the European Commission responsible for Institutional Relations and Communication Strategy
Siim Kallas, Vice President of the European Commission responsible for Administrative Affairs, Audit and Anti-Fraud

Subject: Open letter on DG Trade's secretive and manipulative access to information policy

14 May 2009

Dear Commissioner Ashton,
Dear President Barroso,
Dear Vice President Wallström,
Dear Vice President Kallas,

We are writing to raise our serious concerns over the Directorate-General for Trade's (DG Trade) secretive and manipulative access to information policy exposed in its *Vademecum on Access to Documents*¹ issued in January 2009 (hereinafter the “*Vademecum*”), which is attached to this letter. We find this internal memo to be fundamentally at odds with the objective, spirit and letter of Regulation (EC) 1049/2001,² the Commission's *General Principles and Minimum Standards for Consultation of Interested Parties*³ and the European Transparency Initiative (ETI). We therefore urge you to undertake an immediate assessment of DG Trade's access to information policy and issue a correction of the memo, which assures full transparency. We also call on you to ensure that Commission officials interpret access to information requests as broadly as possible and adopt as a rule the practice of writing minutes for all meetings with lobbyists.

Regulation (EC) 1049/2001 on public access to EU documents and the commitment to a transparent consultation process laid down in the *General Principles and Minimum Standards for Consultation of Interested Parties by the Commission* are key components of the EU's push for greater transparency. That is why they are integrated in the ETI, which was launched in 2005 to strengthen public trust in the EU institutions through increased openness and accessibility.

We consider DG Trade's *Vademecum* as alarming evidence of the department's blatant departure from the bid for greater transparency and accessibility of EU policies – for two reasons:

1) The *Vademecum* advises DG Trade staff to interpret information requests as narrowly as possible

The *Vademecum* gives two examples of how requests for information can be interpreted in the narrowest sense: in the first, a request for documents relating to meetings between DG trade and individual companies was interpreted as referring only to meetings with individual companies and not to meetings with business associations representing those companies; in the second example, documents from meetings between DG trade officials and business representatives were requested, which DG Trade interpreted as not applying to meetings with the Commissioner or the cabinet.⁴

The advice to interpret information requests as narrowly as possible, clearly goes against the spirit, purpose and letter of Regulation (EC) 1049/2001, which aims to “give the fullest possible effect to the right of public access to documents”.⁵

2) The *Vademecum* gives recommendations on how to conceal information about DG Trade's consultation processes and other contact with stakeholders from public scrutiny – particularly contact with industry lobbyists

The briefing suggests staff keep two types of meeting reports, a “factual” one for public release and a more personal one with notes of politically controversial issues, internal assessments and follow-

up proposals, which would not need to be disclosed.⁶ More generally, it tells officials to draft reports of meetings with and emails to third parties (“e.g. industry”) particularly carefully – as these are “favourite 'targets' of requests for access to documents, especially by NGOs”.⁷ It particularly advises staff to avoid remarks about informal meetings with industry representatives in emails, which might be subject to information requests.⁸

Such advice to obscure information about consultation processes contravenes the Commission's *General Principles and Minimum Standards for Consultation of Interested Parties*, which state that for consultation processes to be transparent to the general public, “it must be clear: what issues are being developed, what mechanisms are being used to consult, who is being consulted and why, what has influenced decisions in the formulation of policy”.⁹ The lack of transparency in DG Trade's approach towards consultation processes is particularly worrying as the department has been repeatedly criticised for granting corporate lobby groups privileged access and undue influence over its decision-making, resulting in trade policies that fuel poverty, inequality and environmental destruction across the world.¹⁰

Overall, the *Vademecum's* advice on secrecy and manipulative record taking make it a worrying step backwards from the ETI.

We therefore urge you to

- undertake an immediate assessment of DG Trade's access to documents policy;
- distance yourself from the contentious parts of the *Vademecum* quoted in this letter and initiate a correction of these sections which ensures full transparency;
- immediately release all withheld “assessment” reports about meetings with third parties in cases where “factual” reports about these meetings have already been released by DG Trade under Regulation (EC) 1049/2001;
- ensure that the Commission abstains from the practice of double reporting and adopts as a rule the practice of writing minutes for all meetings with lobbyists, which assure the widest possible transparency. These minutes should be easily accessible to the public;
- make sure all Commission officials interpret access to documents requests as broadly as possible, as instructed under Regulation 1049/2001.

We look forward to your response.

Yours sincerely,

Access Info (Spain)

Alliance for Lobbying Transparency and Ethics Regulation (Alter-EU)

Interchurch Organization for Development Cooperation (ICCO, the Netherlands)

Platform ABC (the Netherlands)

Seattle to Brussels Network (S2B)

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Notes

- ¹ DG Trade's internal *Vademecum* on access to documents from January 2009 was released on the website *Wikileaks* (http://wikileaks.nl/wiki/EU_DG_Trade_internal_brief:_Vademecum_on_Access_to_Documents%2C_Jan_2009) on 13 March 2009 and first taken up in an article in the *EU Observer* on 9 April 2009 (<http://euobserver.com/9/27935>). It is attached to this letter.
- ² Regulation (EC) No 1049/2001 of the European Parliament and of the Council of May 30 May 2001 regarding public access to European Parliament, Council and Commission documents.
- ³ Communication from the Commission. Towards a reinforced culture of consolidation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission, 11.12.2002, Com(2002) 704 final.
- ⁴ "Recent cases concern requests for information about meetings with '*individual companies*' on our FTAs which have allowed us to exclude *business federations* on the same points, or about meetings with '*DG Trade officials*' which have allowed us to exclude meetings on the same point with the Commissioner or the cabinet." The *Vademecum*, p. 5, original emphasis.
- ⁵ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of May 30 May 2001 regarding public access to European Parliament, Council and Commission documents, (4).
- ⁶ "A few tips: when writing a **meeting report**, separate **factual elements** (i.e. a neutral account of what actually happened in the meeting and what was said by the participants), from **assessments and personal/subjective comments or opinions** (e.g. your personal evaluation of the meeting, your opinion on the real intentions of one or more participants, your assessment of the situation etc...) and **follow-up points**. This would allow us to have to release only the factual part of the report, and avoid partial release.
=> The best thing to do is to make two separate documents, i.e. one factual report, and a separate one with the assessment of the report (and possibly suggestions for follow-up). By doing this, we avoid having to "whiten" certain parts of the report, which creates an additional work burden (scrutinise the documents, determine what has to be deleted and justify why it has been deleted...) and which always carries a risk of confirmatory action, or even recourse to the Ombudsman or the Court (who may ultimately find that the invocation of exception grounds was not justified and even order the deleted parts to be disclosed...)" The *Vademecum*, p. 13, original emphasis.
- ⁷ The *Vademecum*, p. 13.
- ⁸ "Avoid making personal comments in **e-mails with third parties** which may be the object of disclosure. For instance, when writing an e-mail to an external contact which you happen to know personally or have contacts with outside the professional sphere, refrain from any message that may be of personal nature (e.g. don't refer to the great lunch you have had with an industry representative privately or add a PS asking if he/she would like to meet for a drink)." The *Vademecum*, p. 13, original emphasis.
- ⁹ Communication from the Commission. Towards a reinforced culture of consolidation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission, 11.12.2002, Com(2002) 704 final, p. 17.
- ¹⁰ Seattle to Brussels Network (2005): The EU Corporate Trade Agenda. The Role and the Interests of Corporations and their Lobby Groups in Trade-Policy Making in the European Union, http://www.foeeurope.org/publications/2005/EU_corporate_trade_agenda.pdf; Seattle to Brussels Network (2006): Corporate Power over EU Trade Policy. Good for Business, bad for the World, http://www.foeeurope.org/publications/2006/Corporate_power_over_EU_Trade_policy_Sept_2006.pdf; Corporate Europe Observatory (2008): Global Europe. An Open Door Policy for Big Business Lobbyists at DG Trade, <http://www.corporateeurope.org/global-europe/content/2009/01/open-door-policy-big-business>.