

## **IF THE EU CAN RELEASE TTIP NEGOTIATING DOCUMENTS** **THE TPPA COUNTRIES CAN DO THE SAME#**

**The European Commission has made a series of commitments to more transparency in the Transatlantic Trade and Investment Partnership (TTIP) negotiations with the US.**

### ***Ombudsman ruling***

The EU Ombudsman conducted an Inquiry into transparency and public participation in the Transatlantic Trade and Investment Partnership (TTIP) from June 2014 – January 2015. Her starting point was that citizens need to have input into the negotiations:

**“The aim of the Ombudsman inquiry is to help ensure that the public can follow the progress of these talks and contribute to shaping their outcome.”<sup>1</sup>**

The Ombudsman said the potential impacts of TTIP are so important that TTIP documents must be released:

**“If agreed, TTIP ... will shape the future rules and standards in areas such as food safety, cars, chemicals, pharmaceuticals, energy, the environment and the workplace.<sup>2</sup> ... [G]iven the potential impact of TTIP on the lives of citizens, key documents, such as the negotiating directives, have to be published.”<sup>3</sup>**

Noting the fate of the Anti-counterfeiting Trade Agreement (ACTA) where the negotiating texts had to be released, she observed that traditional methods of confidentiality and limited public participation were not longer appropriate:

**“Those traditional methods are ill-equipped to generate the legitimacy necessary for the TTIP agreement, which, in its most ambitious form, could result in a transatlantic single market, with binding rules in a wide range of areas impacting on citizens’ daily lives.”<sup>4</sup>**

The public consultation had made it clear the importance stakeholders place on documents, such as the consolidated texts setting out both countries’ positions:

**“Accordingly, *it is vital that the Commission inform the US of the importance of making, in particular, common negotiating texts available to the EU public before the TTIP agreement is finalised* [to] allow for timely feedback to negotiators in relation to sections of the agreement that pose particular problems. ... [it is preferable to learn of such problems sooner rather than later.”<sup>5</sup> (original emphasis)**

### ***Outcome***

In January 2015 the EC responded by announcing that it will release the agreed TTIP text before it is signed (whereas the Ombudsman sought release before it was finalised):

**“We will make the whole text of the agreement public once negotiations have been concluded – well in advance of its signature and ratification”.<sup>6</sup>**

**It also disclosed the proposed structure of TTIP:**

A final agreement would have 24 chapters,<sup>7</sup> grouped together in 3 parts:

1. Market access
2. Regulatory Cooperation
3. Rules<sup>8</sup>

**The EC further committed to release the following categories of TTIP documents:<sup>9</sup>**

“as part of our latest transparency initiative, we're publishing

- new 2-page factsheets, in plain language
- negotiating texts we've given US negotiators:
  - EU textual proposals on parts 2 and 3 of the TTIP – these set out how we'd want a final deal to read, line by line
  - EU position papers – what we want to achieve in a chapter.”

**The EC had already released negotiating texts that relate to the regulatory and rules negotiations, which**

“set out the actual language and binding commitments which the EU would like to see in the parts of the agreement covering regulatory and rules issues.”<sup>10</sup>

## ***Exceptions***

**The Ombudsman recognised that certain documents must remain disclosure of TTIP documents, but:**

“The Commission must interpret any exceptions to the fundamental right of public access to documents restrictively. ... it must put forward specific arguments, based on the content of the documents and the negotiating context, with particular emphasis on the timing of disclosure. If disclosure of a document, at a particularly, sensitive point in the negotiations, would harm legitimate interests, access to that document may validly be denied at that time.”<sup>11</sup>

**The EU's public access regulations provide grounds to refuse access at certain stages of negotiations if convincing and specific arguments could be provided:**

“It may well be that convincing arguments can be put forward for the non-disclosure of documents relating to negotiations when those negotiations are ongoing. However, such arguments must be specific in nature, relating to the content of a document and the negotiating context, with particular emphasis of the timing of disclosure.”<sup>12</sup>

**The exception on public access relating to international relations requires that disclosure would *undermine* those relations:**

“ There is a public interest in maintaining the trust and confidence of any international partner of the EU which makes reasonable and well-grounded requests for the non-disclosure of documents, based on the need to protect the legitimate interests of the international partner. However, no public interest as regards international relations exists in complying with unreasoned or unreasonable requests not to disclose documents.”<sup>13</sup>

If the US, when consulted by the Commission over the release of documents,<sup>14</sup> wants TTIP documents to be withheld it must explain its legitimate interests in non-disclosure and the Commission must find those reasons convincing:

“if a US request not to disclose a document is reasoned, and that reason is based on legitimate interests of the US, the Commission should take that request into account when examining whether it should release the document.”<sup>15</sup>

However, US objections to release of documents are not conclusive grounds for the EC to withhold them.

“US resistance to publishing certain TTIP documents is not in itself sufficient to keep them from the European public. The Commission has to ensure at all times that exceptions to the EU citizens’ fundamental right to get access to documents are well-founded and fully justified.”<sup>16</sup>

### ***Disclosure to Date***

The Ombudsman began her inquiry by urging the Commission formally to disclose the EU’s TTIP negotiating directives.

“To my mind, a high level of transparency of the aims and objectives of the European Union constitutes a precondition for a successful outcome of the negotiations. ... [A] proactive approach to transparency could enhance the prospects of success by enhancing the legitimacy of the negotiating process in the eyes of citizens.”<sup>17</sup>

Applying the case-by-case and time-sensitive approach to release of documents the Ombudsman suggested release of the negotiating mandate a year after it was adopted:

“would not now (i) damage mutual trust between the negotiators; (ii) inhibit the development of free and effective discussions in the context of the negotiations; and/or (iii) reveal strategic elements of the negotiations either to the other negotiating party or to third parties.”<sup>18</sup>

It then did so, long after the document had been leaked and posted on the Internet. The Ombudsman declared:

“It’s a good day for TTIP transparency.”<sup>19</sup>

Part way through the Ombudsman’s inquiry the Commission promised to be more proactive in releasing information:

“Actions put forth by the Commission to enhance transparency in the TTIP negotiations include:

- making public more EU negotiating texts that the Commission already shares with Member States and Parliament;
- classifying less TTIP negotiating documents as "EU restricted", making them more easily accessible to MEPs outside the reading room;
- publishing and updating on a regular basis a public list of TTIP documents shared with the European Parliament and the Council.”<sup>20</sup>

**At the same time the EC committed to:**

- “reporting more extensively on the outcome of negotiating rounds;
- preparing additional on-line material that explains our negotiating positions and approaches;
- increasing engagement with Civil Society and the general public at political and working level, in Brussels and within Member States;
- increasing communication and outreach efforts (including in social media) alongside increased engagement with citizens.”<sup>21</sup>

**The EC further committed to improve access for all EU MPs to more documentation under conditions of confidentiality.**

- “providing access to TTIP texts to all Members of the European Parliament (MEPs), not just a select few, by extending the use of a 'reading room' to those MEPs who had no access to restricted documents so far;”<sup>22</sup>

**The Commission said it would proactively publish minutes of meetings with lobbyists.**

“The Commission will, within two weeks of each meeting, publish on its website the dates, locations, names of the organisations and self-employed individuals met and the topics of discussion of its bilateral meetings.”<sup>23</sup>

## **The Contrast between TTIP and the TPPA**

### **TTIP**

The EU was forced into this level of transparency by a combination of activism, pressure from the European Parliament, and the Ombudsman’s inquiry.

When the negotiations began, the EC informed the US that *negotiating* documents would be kept confidential *in accordance with EU law*.<sup>24</sup> The relevant law included the EU Regulation on public access to documents, which has an exception that requires documents to be withheld *where disclosure would undermine the protection of the public interest ... as regards international relations*.<sup>25</sup>

The pressure on the EC over TTIP mirrors opposition to the secrecy surrounding the negotiation of the Anti-Counterfeiting Trade Agreement (ACTA). A resolution of the European Parliament on 10 March 2009<sup>26</sup> forced the EU to seek a review of the confidentiality provisions previously agreed to among the ACTA parties during the late stages of negotiations.<sup>27</sup> The Canadian government was under similar pressure.<sup>28</sup>

As a result the confidentiality agreement was amended. Several consolidated negotiating texts labeled a ‘PUBLIC predecisional/deliberative draft’ were released during the negotiations, with the identification of the parties supporting particular positions removed.<sup>29</sup>

The EC’s approach in TTIP still does not go as far as ACTA, with no commitment to releasing the negotiating text before it is agreed.

## TPPA

The EC's new position on TTIP is in stark contrast to the TPPA negotiations. Indeed, the transparency of TPPA has deteriorated. A minimal degree of openness was forced on the governments from mid-2010 by intense criticism over their secrecy. Since mid-2013 the process has gone almost totally underground.

### Negotiating documents and the text

- **When the formal negotiations began in March 2010 the parties agreed not to disclose a broad range of documents relating to the negotiations until four years after the treaty comes into effect or the talks are closed with no agreement.**<sup>30</sup> These confidentiality terms are worse than the TTIP one outlined above.<sup>31</sup> The existence of this agreement was only discovered because it was referred to on the cover page of a leaked text.<sup>32</sup>
- **Individual countries were asked to affirm this understanding in letters.** The details of each country's responses, and whether they made any conditions or variations, are not known.
- **Many of the same countries have previously released the text in multilateral and plurilateral negotiations.** A number of negotiations were not conducted according to this level of secrecy methods. Draft texts and working documents have been released during the WTO Doha round, the Multilateral Agreement on Investment, the Free Trade Area of the Americas, and the Anti-Counterfeiting Trade Agreement (ACTA).
- **After almost five years of negotiations, when the text is reportedly close to conclusion, not even a list of proposed chapters has been officially released.** Some governments have unofficially listed the chapters, creating unevenness in access to information across countries and uncertainty about the accuracy of that information.<sup>33</sup>
- **Members of Parliament in different countries have different levels of access to the text.** In most countries legislators have been denied access to the TPPA text. In the US members of Congress had to fight to access the draft texts, which they can only view in a closed room with no advisers, and cannot discuss its content with staff, constituents or anyone.
- **Cleared advisers in the US do have access to formal documents, sometimes including relevant texts.** They are predominantly corporate interests and lobbyists. Other countries, such as New Zealand, appear to have no formal system of cleared advisers. Again, the inconsistency allows commercial interests in some countries to exercise disproportionate leverage.
- **Numerous chapter texts and documents have been leaked and posted on the Internet, but parties refuse to formally acknowledge or release**

**them.** The stated purpose of the confidentiality agreement was ‘to facilitate candid and productive negotiations.’<sup>34</sup> There is no basis for claiming that formal release of these documents would jeopardise the negotiations by premature disclosure of a country’s position, as all the parties are aware of the content of the document.

- **The TPPA confidentiality letter is silent on the status of the text once negotiations are over and it is agreed.** The EU Ombudsman stressed the significance of timing and the need for convincing reasons that disclosure would jeopardise the negotiations. There can be no such reasons once the negotiations are concluded. The TPPA confidentiality letter refers to negotiating documents. It can be presumed that the parties considered the status of an agreed text or outcomes document when drafting the confidentiality terms. Their silence must be interpreted as leaving the disclosure to the discretion of each party, in recognition that they have constitutional and other legal obligations, as well as political preferences.
- **Different statements from Ministers in different countries about release of an agreed text reinforce the view that it is a matter for each country’s discretion.** The Malaysian government has publicly committed to releasing the text before it is signed.<sup>35</sup> The New Zealand trade minister has said the text would not be released until there was a deal,<sup>36</sup> which could be interpreted the same way. However, elsewhere he said it would not be made public until it was tabled in Parliament.<sup>37</sup>
- **Different legal obligations could lead to inconsistency across the TPPA parties.** For example, under the US Trade Act 2002 and a proposed Fast Track or Trade Promotion Authority Bill the executive must give Congress 90 days notice of intention to sign a trade treaty to allow them to review the deal as seek changes.<sup>38</sup> This would create an unconscionable position that the text was available in one country, before signing, with a view to changes being made, while the Members of Parliament and citizens in another country did not get to see the document until tabled in Parliament, under a system where signing and ratifying the TPPA would be an executive act.
- **The only equitable solution is for the parties to release the draft text before Ministers make decisions on the final outstanding issues.** That would be consistent with the reasoned approach proposed by the EU Ombudsman, and with the precedent set by many of the TPPA parties in ACTA, the MAI, the FTAA, and the Doha round of the WTO.

## **Public participation**

- **A stakeholder process was introduced in 2010 following criticism of the secrecy, but it did not provide effective engagement and excluded those who could afford to attend.**<sup>39</sup> The structured opportunities to interact with negotiators from mid-2010 to mid-2013 involved set piece presentations, and later a ‘market place’ of information, both of which were voluntary for

negotiators to attend. A chief negotiators briefing rarely disclosed any information.

- **There has been no stakeholder process since the 19<sup>th</sup> round in Brunei in August 2013.** This has occurred de facto as meetings of negotiators are described as ‘inter-sessionals’, ‘informal rounds’ or ‘chief negotiators’ meetings. There has been no explanation for terminating formal stakeholder engagement.
- **The proposed dates and locations for negotiating meetings are kept secret, at times until the meeting has begun or even has concluded.** There is no legitimate basis for this secrecy, which is clearly designed to frustrate observers who wish to attend on the margins and to prevent protests in the host city. Some governments refuse to release such information on the grounds that it is confidential to the host of the meeting. Again, the practice is inconsistent, as some countries have released the same information directly or through media interviews.
- **Meetings of ministers are announced very close to the time, with provision for media registration but not stakeholders or observers.** Media receive limited notice and scant information aside from a formal press conference by ministers. Again, different practices of ministers means the public in some countries receive significantly more information than in other countries.
- **Access to information for people from different TPPA countries is uneven and arbitrary.** Some countries have established side room briefings for stakeholders, who are not subject to confidentiality requirements. Other countries and ministers provide privileged information to selected audiences.

---

# This analysis has been prepared by Professor Jane Kelsey, Faculty of Law, The University of Auckland, New Zealand. 1 February 2014

<sup>1</sup> *Decision of the European Ombudsman closing her own-initiative inquiry OI/10/2014/RA Concerning the European Commission*, 6 January 2015, <http://www.ombudsman.europa.eu/cases/decision.faces/en/58668/html.bookmark>

<sup>2</sup> *Decision of the European Ombudsman ... OI/10/2014/RA*

<sup>3</sup> European Ombudsman, ‘Ombudsman asks Council and Commission to publish more TTIP documents’, Press release No 17/2014, 31 July 2014,

<http://www.ombudsman.europa.eu/en/press/release.faces/en/54636/html.bookmark>;

European Ombudsman, ‘Ombudsman welcomes Council decision to publish TTIP negotiating directives’, Press release No. 19/2014, 9 October 2014,

<http://www.ombudsman.europa.eu/en/press/release.faces/en/58057/html.bookmark>

<sup>4</sup> *Decision of the European Ombudsman ... OI/10/2014/RA*

<sup>5</sup> *Decision of the European Ombudsman ... OI/10/2014/RA*

<sup>6</sup> European Commission, ‘Now Online – EU Negotiating Texts in TTIP’, 7 January 2015, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230>

<sup>7</sup> There are 23 listed headings, although it is not clear that these are the chapter headings: Part 1: Trade in Goods and Customs Duties, Services, Public Procurement, Rules of Origin; Part 2: Regulatory Coherence, Technical Barriers to Trade, Food Safety and Animal Plant and Health (SPS), Part 3: Specific Industries: Chemicals, Cosmetics, Engineering, Medical Devices, Information and Communications Technology, Pharmaceuticals, Textiles, Vehicles, Sustainable

---

Development, Energy and Raw Materials, Customs and Trade Facilitation, Small and Medium Enterprises, Investor-State Dispute Settlement, Competition, Intellectual Property and Geographical Indicators, Government-Government Dispute Settlement,

<sup>8</sup> European Commission Director-General for Trade, 'Now online – EU negotiating texts in TTIP', 7 January 2015, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230>;

<sup>9</sup> European Commission, 'European Commission publishes TTIP legal texts as part of transparency initiative', Brussels, 7 January 2015, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1231>

<sup>10</sup> "European Commission publishes TTIP legal text as part of transparency initiative", 7 January 2015, [http://europa.eu/rapid/press-release\\_IP-15-2980\\_en.htm](http://europa.eu/rapid/press-release_IP-15-2980_en.htm)

<sup>11</sup> *Decision of the European Ombudsman ... OI/10/2014/RA*

<sup>12</sup> European Ombudsman to Mr Uwe Corsepius, 29 July 2014.

<sup>13</sup> *Decision of the European Ombudsman ... OI/10/2014/RA*

<sup>14</sup> The confidentiality letter from the EC to the US promised to consult with the US regarding any decision to invoke the exception in the EU freedom of information law for 'protection of the public interest as regards international relations.' See below.

<sup>15</sup> *Decision of the European Ombudsman ... OI/10/2014/RA*

<sup>16</sup> European Ombudsman, 'Further steps to increase TTIP transparency necessary', press release, 7 January 2015,

<http://www.ombudsman.europa.eu/press/release.faces/en/58669/html.bookmark>

<sup>17</sup> European Ombudsman, Letter to Mr Uwe Corsepius, Secretary-General, Council of the European Union, Strasbourg, 29 July 2014.

<http://www.ombudsman.europa.eu/cases/correspondence.faces/en/54634/html.bookmark>

<sup>18</sup> European Ombudsman, Letter to Mr Uwe Corsepius

<sup>19</sup> European Ombudsman, 'Ombudsman asks Council ...', 31 July 2014; European Ombudsman, 'Ombudsman welcomes Council decision to publish TTIP negotiating directives', Press release No. 19/2014, 9 October 2014,

<http://www.ombudsman.europa.eu/en/press/release.faces/en/58057/html.bookmark>

<sup>20</sup> European Commission, 'Opening the windows: Commission commits to enhanced transparency in TTIP', 25 November 2014,

<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1205>

<sup>21</sup> European Commission, 'Communication to the Commission concerning transparency in the TTIP negotiations', Strasbourg, 25 November 2011, C(2014)9052,

[http://ec.europa.eu/news/2014/docs/c\\_2014\\_9052\\_en.pdf](http://ec.europa.eu/news/2014/docs/c_2014_9052_en.pdf)

<sup>22</sup> European Commission, 'Communication to the Commission concerning transparency ...', 25 November 2011

<sup>23</sup> European Commission, 'Opening the windows ...', 25 November 2014. The Ombudsman sought further information releases: see European Ombudsman, 'Further steps ...', 7 January 2015.

<sup>24</sup> 'Arrangements on TTIP negotiating documents', 5 July 2013, [http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\\_151621.pdf](http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151621.pdf):

"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.

The EU 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 the public interest as regards, for example, international relations. Following discussions with the U.S. side, in the case of the negotiations of a TTIP Agreement:

---

(a) **All documents related to the negotiation or the development of the TTIP, including negotiating texts, proposals of each side, accompanying explanatory material, discussion papers, emails relating 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.**<sup>24</sup> ... [emphasis added]

(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 negotiations 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 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.

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.”

<sup>25</sup> Regulation (EC) No 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission Documents:

Whereas:

- (1) ... Article 1 of the Treaty on European Union enshrines the concept of openness, stating that the Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen;
- (2) Openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and accountable to the citizen in a democratic system. ...
- (10) In order to bring about greater openness in the work of the institutions, access to documents should be granted by the European Parliament, the Council and the Commission, not only to documents drawn up by the institutions, but also to documents received by them. ...
- (11) In principle, all documents of the institutions should be accessible to the public. However, certain public and private interests should be protected by way of exceptions. ...

Article 4: Exceptions

***The institutions shall refuse access to a document where disclosure would undermine the protection of***

(a) the public interest as regards:

- public security,
- defence and military matters,
- ***international relations,***
- the financial, monetary or economic policy of the Community or a Member State. ...

7. The exceptions as laid down in paragraphs 1 to 3 shall only apply for the period during which protection is justified on the basis of the content of the document.

---

<sup>26</sup> European Parliament, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0058+0+DOC+XML+V0//EN>; Margot Makinski; An Overview and the Evolution of the Anti-Counterfeiting Trade Agreement', PIJIP Research Paper No.17, American University Washington College of Law, Washington DC, 2011, p.5.

<sup>27</sup> 'ACTA Text Is Released, but Many Questions Remain: Bowing to public pressure, the eleven proponents of the potentially far-reaching Anti-counterfeiting Trade Agreement have at long last released the draft negotiating text they are working on', *Bridges News*, 7 May 2010, <http://www.ictsd.org/bridges-news/bridges/news/acta-text-is-released-but-many-questions-remain-bowing-to-public-pressure>.

<sup>28</sup> Michael Geist, 'Battle over ACTA heats up as DFAIT Consults', 30 March 2009, <http://www.michaelgeist.ca/2009/03/acta-column-post-march-09/>;

<sup>29</sup> Official draft texts were released in April 2010 and December 2010, and the final text in May 2011, eg. *Consolidated Text Prepared for Public Release: Anti-Counterfeiting Trade Agreement*, April 2010. [http://trade.ec.europa.eu/doclib/docs/2010/april/tradoc\\_146029.pdf](http://trade.ec.europa.eu/doclib/docs/2010/april/tradoc_146029.pdf)

<sup>30</sup> Communication from New Zealand Government, March 2010 (<http://www.mfat.govt.nz/downloads/trade-agreement/transpacific/TPP%20letter.pdf>):

"As depository for the Trans-Pacific Partnership Agreement, we have been asked to advise participants of important points regarding the handling of the documents we exchange during these negotiations and seek confirmation that you agree with this approach.

- First, all participants agree that ***the negotiating texts, proposals of each Government, accompanying explanatory material, emails related to the substance of the negotiations, and other information exchanged in the context of the negotiations, is provided and will be held in confidence, unless each participant involved in a communication subsequently agrees to its release.*** [emphasis added] This means that the documents may be provided only to (1) government officials or (2) persons outside government who participate in that government's domestic consultation process and who have a need to review or be advised of the information in these documents. Anyone given access to the documents will be alerted that they cannot share the documents with people not authorized to see them. All participants plan to hold these documents in confidence for four years after entry into force of the Trans Pacific Partnership Agreement, or if no agreement enters into force, for four years after the last round of negotiations. ...

The policy underlying this approach is to maintain the confidentiality of documents, while at the same time allowing the participants to develop their negotiating positions and communicate internally and with each other. We look forward to your confirmation that you agree with this approach. ...

<sup>31</sup> The Trade in Services Agreement (TISA) is worse again – documents are to be held secret for five years after the agreement comes into force or negotiations are closed without a deal.

<sup>32</sup> The standard cover note on leaked TPPA documents (eg. TPP, 'Regulatory Coherence', undated, <http://www.citizenstrade.org/ctc/wp-content/uploads/2011/10/TransPacificRegulatoryCoherence.pdf>) reads:

"Derived From: Classification Guidance  
dated March 4, 2010

Reason: 1.4(b)

Declassify on: Four years from entry into force of the TPP agreement or, if no agreement enters into force, four years from the close of the negotiations."

<sup>33</sup> eg. 'Text of TPPA to be made public: Mustapa', *The Sun Daily*, 21 February 2014, <http://www.thesundaily.my/news/963509>

<sup>34</sup> <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Trans-Pacific/1-TPP-Talk/0-TPP-talk-29-Nov-2011.php>

<sup>35</sup> 'Text of TPPA to be made public: Mustapa', *The Sun Daily*, 21 February 2014, <http://www.thesundaily.my/news/963509>

---

<sup>36</sup> 'Tim Groser: Secrecy is part of TPPA negotiations', TV3, 9 December 2014, <http://www.3news.co.nz/nznews/tim-groser-secrecy-is-part-of-tppa-negotiations-2014110910#axzz3R88eVLP1>

<sup>37</sup> 'NZ Govt won't budge over TPP details', RadioNZ,, 12 February 2014, <http://www.radionz.co.nz/news/political/235882/nz-govt-won%27t-budge-over-tpp-details>

<sup>38</sup> *Inside US Trade* summarised the position in a 17 December 2014 article 'TPP Countries Intent on Starting Legal Scrub Prior to Reaching Agreement': "both the 2002 TPA law and the TPA bill pending in the current Congress require the president to notify both chambers of his intent to enter into a trade agreement -- a reference to signing the deal -- at least 90 days before doing so. This layover is meant to give members of Congress a chance to review the deal and seek changes before it is signed."

<sup>39</sup> <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Trans-Pacific/0-auckland-round-updates.php>