

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

March 19, 2013

VIA EMAIL

Mr. William E. New  
Editor in Chief of Intellectual Property Watch  
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Bronxville, New York 10708  
[wnew@ip-watch.ch](mailto:wnew@ip-watch.ch)

Dear Mr. New:

This letter is USTR's initial response to your Freedom of Information Act (FOIA) request of March 23, 2012, and a slightly modified version of the request you submitted on April 11, 2012 after speaking with the USTR FOIA Office on April 5, 2012. USTR received your FOIA appeal via fax on January 11, 2013, seeking a response to your initial FOIA request. You sought copies of the following records:

- (1) Records and correspondence consisting of, describing or concerning the U.S. negotiating position with respect to the Trans-Pacific Partnership ("TPP"), and any U.S. proposals or draft texts of the TPP;
- (2) Records, correspondence, and minutes consisting of, describing or concerning all communications between USTR and any member of the Industry Trade Advisory Committee (ITAC) on Intellectual Property Rights, the ITAC on Chemicals, Pharmaceuticals, Health Science Products and Services, and the ITAC on Services and Finance Industries related to the TPP;
- (3) Joint texts of the TPP or any of its provisions that have been circulated to negotiating parties;
- (4) Records and correspondence indicating the 2012 schedule of official negotiation rounds of the TPP (including locations) and the schedule for and locations of side meetings; and
- (5) The full text of, and records or correspondence referencing, the Memorandum of Understanding dated March 4, 2010, as well as any subsequent amendments or Memoranda of Understanding.

We had a telephone conference on January 23, 2013, and we reviewed the portions of your FOIA request that sought categories of documents that, by their very nature, would be exempt from disclosure under the FOIA. Specifically, we noted that records in categories (1) and (3) above would not be releasable because draft text of the TPP, circulated among TPP negotiating parties is classified confidential per Executive Order 13526 and thus exempt from disclosure under Exemption 1 of the FOIA. Further, USTR internal discussions of the United States negotiating positions with respect to the TPP would also be withheld pursuant to the deliberative process privilege under FOIA Exemption 5. We also described the burdensome search USTR would need to undertake to locate and account for the records likely to be responsive to categories (1) and (3) though ultimately the agency would withhold these records in full.

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We also discussed the portions of your request, specifically categories (4) and (5), that sought records likely to be releasable and USTR agreed to focus its initial efforts on collecting these records. In doing so, we also offered to assemble a comprehensive set of TPP-related documents and material from the [www.ustr.gov](http://www.ustr.gov) website, complete with embedded web links on the documents for your convenience.

Finally, we explained that category (2) appeared to encompass a set of discrete communications between USTR and the members of select Industry Trade Advisory Committees (ITACs) that USTR could search for and review for responsiveness and releasability, though we cautioned that this review process would take a few months to complete. We also noted that most, if not all, of these communications would qualify for protection under the (b)(5) deliberative process privilege as deliberations between the agency and a third party advisor and many of these records could also contain third party commercial and/or financial information which is also protected from disclosure under exemption (b)(4) of the FOIA. We agreed, however, to perform a close review of these communications to evaluate whether USTR would be in a position to waive the applicability of exemption (b)(5) to any of these documents to make discretionary releases of certain records. Note that USTR cannot discretionarily release information protected under exemption (b)(4) as the application of that exemption belongs to the third party whose information is at issue.

Accordingly, today we are releasing two hundred and seventy-seven (277) pages of TPP-related documents, a majority of which are from the USTR website, that include information responsive to categories (4) and (5) of your request. In particular, documents responsive to category (5) are located at pgs. 255-257 and documents responsive to category (4) are located throughout the production with groups of records beginning on pgs. 87 and 226. With regard to the category (2) ITAC communications, USTR has completed an initial search for documents from the ITAC members you listed in your request and we are in the process of reviewing those records for both responsiveness and releasability. We will continue this review process and contact you again as soon as we have additional progress to report.

Sincerely,



Melissa Keppel

Associate General Counsel

**Case File # 1232317**