



Background briefing

European Commission sued for giving privileged access to corporate lobby groups in EU-India trade relations

Corporate Europe Observatory
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On 15 February, Corporate Europe Observatory launched a legal action¹, suing the EU's executive in the EU General Court for withholding documents related to the EU's free trade talks with India. The Commission is accused of discriminating in favour of corporate lobby groups and of violating the EU's transparency rules.

The case concerns 17 documents including meeting reports, emails and a letter, which the Commission's trade department (DG Trade) sent to industry associations including BusinessEurope and the Confederation of the European Food and Drink Industry (CIAA). While these corporate lobby groups received full versions of the documents, the Commission only released censored versions to Corporate Europe Observatory, arguing that full disclosure would undermine the EU's international relations. The censored sections relate to allegedly sensitive information about priorities and strategies in the ongoing trade talks with India including issues such as tariff cuts, services, investment and government procurement liberalisation and health standards.

What is at stake is whether the Commission can continue its practice of granting big business privileged access to its trade policy-making process by sharing information that is withheld from the public. This practice not only hampers well-informed and meaningful public participation in EU trade policy-making, it also leads to a trade policy that, while catering for big business needs, is harmful to people and the environment in the EU and the world.

The long history of the case

The efforts to gain access to the information began on 5 June 2009. Corporate Europe Observatory filed an access to documents request for correspondence and reports from meetings between the Commission and corporate lobby groups, in which the ongoing free trade talks with India had been discussed. The purpose of the request was to monitor whether the Commission was shaping its negotiating position based on the public interest or only on the demands of large corporations. Previous research had shown that DG Trade had disregarded the concerns of small enterprises, trade unions and NGOs when it drew up the EU's 2006 Global Europe trade strategy². So, there was every reason to monitor the involvement of big business in the trade negotiations with India.

After multiple deadline extensions and a complaint to the Commission's General Secretary, DG Trade finally responded on 29 April 2010 – nine months after the statutory deadline. The response contained a list of more than 170 documents from 2008 and 2009 identified by DG Trade: meeting reports, emails and letters. Out of these, 50 documents were only partially released. More than 30 documents were withheld in their entirety, including email exchanges and reports about meetings with pharmaceutical companies Sanofi-Aventis, Eli Lili and GlaxoSmithKline, as well as pharma lobby group EFPIA. They were involved in lobbying the Commission for tightened intellectual property rights in the future EU-India deal, which public health groups have slammed as a threat to India's position as the pharmacy of the global South.

Among the undisclosed and censored documents, 17 had been sent to industry lobby groups in full, questioning DG Trade's claim that their public release would undermine the EU's international relations. On 21 May 2010, Corporate Europe Observatory challenged DG Trade's decision regarding these 17 documents in a complaint to the Secretary General of the Commission, who is responsible for dealing with access to information issues. On 14 September 2010, after more delaying tactics from the Commission, and a further deadline extension was not met, Corporate Europe Observatory was forced to go to the EU's General Court to get a response. Following the court action, the Commission's Secretary General backed DG Trade's initial decision on 6 December 2010. The lawsuit, launched on the 15 February 2011, is the last resort in this long quest for access to information.

The case in detail

The case concerns 17 documents related to the EU's trade relations with India, which the Commission has shared in full with corporate lobby groups such as BusinessEurope. Corporate Europe Observatory, however, only received censored versions of the documents, with allegedly sensitive information about priorities, tactics and strategies in the negotiations deleted. One of the 17 documents has been withheld in its entirety.

The Commission argued that the public disclosure of these documents would undermine the EU's international relations. It would negatively affect the atmosphere of mutual trust in the ongoing negotiations with India, they claimed, and releasing the information could also have repercussions on relations with other countries.

But how can documents that the Commission has already shared with the business community at large suddenly become confidential and a threat to the EU's international relations when a public interest group asks for their disclosure? This is the core question raised by the lawsuit.

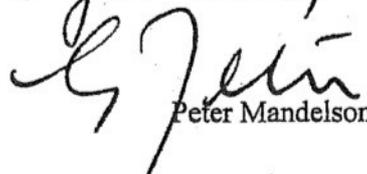
Example 1: Mandelson's letter to BusinessEurope

Take for example one of the contested documents, a letter from the former EU Trade Commissioner Peter Mandelson to BusinessEurope's Director General Philippe de Buck from March 2008³. The letter was in response to a previous letter from BusinessEurope asking for "real liberalisation" of services, investment and public procurement markets in both India and the EU and dismantling all of India's import tariffs – not just the 90% offered by Indian negotiators at that time⁴.

In Mandelson's response, the Commissioner thanked BusinessEurope for the "timely reinforcement" of his position and assured the lobby group that their interests "coincide with my own concerns and were discussed extensively". He also commented on the EU and Indian negotiating positions. However, these comments were deleted from the version that was released to Corporate Europe Observatory. BusinessEurope's Philippe de Buck had clearly received it without deletions. In a handwritten note at the bottom of the letter, Mandelson even encouraged him to "make some comments to your counterparts in the CII in view of the above" (see excerpt from the letter below).

Finally, I would like to express my appreciation for Business Europe's engagement and valuable input in this process and in other FTAs.

You might make some comments to your counterparts in the CII in view of the above.


Peter Mandelson

Excerpt from letter of former EU Trade Commissioner Peter Mandelson to BusinessEurope's Philippe de Buck, dated 18 March 2008

CII is the Confederation of Indian Industries, with a membership of over 8,100 industry associations/companies, and representing over 90,000 different companies over all. So, Mandelson expressly invited BusinessEurope to reveal to and discuss the contents of his letter with an organisation with a direct and indirect membership of close to 100,000 bodies.

Philippe de Buck would also have shared the letter with the members of BusinessEurope – because it is the job of an industry association to serve as an interlocutor between the EU institutions and its members. BusinessEurope has 40 national and sectoral member associations from 34 countries, including from non-EU countries such as Switzerland and Turkey. It also has over 40 “partner companies” to which it offers “particular services”. They also include non-EU companies such as Exxonmobil, Microsoft, Pfizer, Philip Morris (all US), Lukoil (Russia) and Toyota (Japan).



Former Trade Commissioner Peter Mandelson (centre) shaking hands with former Indian Minister for Commerce and Industry, Kamal Nath (right), former CII President Sunil Bharti Mittal (left) and BusinessEurope's Philippe de Buck (second left) at the EU-India Business Summit in Delhi, 29 November 2007

What all this comes down to is that the letter was effectively put out to general release by Peter Mandelson the moment he sent it out. The information that was later withheld from Corporate Europe Observatory, was not considered sensitive when sent to big business. Such an approach is clearly a case of manifest discrimination between big business and a public interest group – an argument that the lawsuit makes for all the documents concerned.

Example 2: minutes of the EU's market access working groups

Twelve of the censored documents at the core of the lawsuit are meeting reports from the EU's Market Access Advisory Committee (MAAC) and its working groups. They operate in the context of the EU's Market Access Strategy and bring together Commission officials, EU member state representatives and corporate lobbyists who discuss regulatory barriers in key markets, developing joint strategies to get rid of them. Market access in India ranks high on the agenda in the groups dealing with postal and distribution services, cars, tyres, textiles, food safety and animal health measures.

Several of the issues raised by these groups have made it onto the EU's list of the top priority barriers which prevent access to the Indian market⁵. This means that they have been jointly challenged by the EU Commission in Brussels, its delegation in Delhi and by EU member states: in the free trade talks with India, at the multilateral level in the WTO and in all kinds of 'dialogues' with the Indian authorities, sometimes with the support of other trading power-hubs like the US or Japan. Four of these 'barriers' were discussed by groups that the Commission is now trying to shield from public scrutiny by censoring reports of their work:

- The EU has challenged India's import restrictions on pork and poultry products from countries affected by bird flu. On behalf of the Association of Poultry Processors and Traders (AVEC), the European food and drink lobby (CIAA) and the meat processors' lobby group (CLITRAVI), the EU has challenged these restrictions, which it claims go beyond international standards. India, however, insists on its right to take preventive measures against the spread of the flu: “We are well within our rights to impose the restrictions as we have been affected by the bird flu virus in the past and don't want to take any risks”⁶.
- The EU has challenged requirements for a certificate that shows that imported pork products come from places that are free from a number of pig diseases. Again, the EU has acted on behalf of the meat industry and criticised the measure for going beyond what is internationally required.

- The EU has challenged existing and upcoming legislation for medical technology that requires, for example, that any imported device still has a valid shelf life of not less than 60% of its original shelf life – an anathema for the medical technology industry lobby group Eucomed.
- The EU has challenged the need for an Indian certificate for imported tyres for consumer protection and road safety. The EU Commission, the European Tyre & Rubber Manufacturers' Association (ETRMA) and tyre companies such as Continental, Michelin and Pirelli, which apply different safety standards, see these kinds of regulations as “barriers to trade with a danger to spill over to the whole Asian region if they are not contained”⁷.

Corporate lobby groups have an exclusive place in the MAAC and its working groups. Trade unions, public health and human rights groups are not represented. On top of that, the industry associations and companies present in the meetings receive the full reports, including information about strategies and tactics regarding negotiations with India and about necessary follow up actions. Yet again, this information was deleted from the reports that were released to Corporate Europe Observatory via the EU's access to information rules, discriminating in favour of corporate lobby groups and violating the EU's transparency rules.

The context: EU-India negotiations and the struggle for openness in the EU

The lawsuit takes place as the EU and India are speeding up negotiations on a far-ranging free trade agreement, which they want to conclude by June this year. The talks, which started in 2007, cover a wide range of areas from trade in goods, the deregulation of services, investment and government procurement to the strict enforcement of intellectual property rights.

Negotiations have been shrouded in secrecy, with no text or position as yet disclosed to the public. Yet, there are major concerns prompted by the scant information that has emerged that the EU-India FTA will in fact fuel poverty, inequality and environmental destruction. Research by Corporate Europe Observatory and India FDI Watch showed that the EU Commission and the Indian government have effectively handed the negotiating agenda over to big business⁸.

The detrimental consequences of the planned EU-India free trade deal

In December, more than 200 civil society organisations from Europe and India raised the following concerns about the planned EU-India free trade deal, calling for an immediate halt to the talks⁹:

Increased market access for European businesses would expose Indian farmers, fisherfolk, street vendors and small businesses to crushing competition and lead to massive job and livelihood losses.

The deal's intellectual property rights provisions would severely affect India's ability to provide affordable medicines for the treatment of AIDS, malaria and cancer across the world.

Further **liberalisation of investment** would remove policy tools to protect and build domestic industries. Liberalising foreign direct investment in land, fisheries and other natural resources would deprive millions of access to the resources they depend on for their livelihoods.

Further **liberalisation of financial services** would cushion lending to disadvantaged sectors like small farmers and enterprises, and would lead to a dramatic decline in rural credit. Financial sector liberalisation would also further destabilise the financial system.

Opening **government procurement markets** would limit the ability of governments to advance equity and social justice by supporting SMEs, marginalised regions and groups.

Seeking reckless **access to raw materials** would undermine India's rights to regulate the use of raw materials and natural resources in favour of their people, exacerbate ongoing land displacement struggles and undermine people's rights for their habitats and produce.

The deregulations of the movement of staff in transnational companies could trigger a shortage of trained labour in India and downward pressure on labour standards in Europe – to the detriment of workers and communities in both countries of origin and destination.



Protests against the EU-India FTA, India, December 2010

In December 2010, more than 200 civil society organisations from Europe and India called for an immediate halt to the negotiations until all negotiation texts have been published, the privileged access of big business to the talks has been ended and broad consultations with the most affected groups in India and Europe have taken place (see box on the previous page). Their concerns were echoed in a letter from 25 MEPs to EU Trade Commissioner, Karel de Gucht¹⁰.

The lawsuit has been launched at a time when the Commission and the European Council are set to further restrict the EU's freedom-of-information rules. Their proposals, which would substantially reduce the number of documents available on request, limiting them to documents that are formally transmitted between the EU institutions, are currently being discussed by the European Parliament. An alliance of some 180 transparency groups, investigative journalists and academics recently called on MEPs to amend the proposals to "protect the rights of European citizens to access information and ensure transparency of EU institutions"¹¹.

Next steps

The application by Corporate Europe Observatory will be reviewed by the General Court and sent to the European Commission. The latter will have two months to reply, but can ask to extend the deadline. Once the written procedure is declared closed, the General Court will set a date for the oral hearing in Luxembourg.

Corporate Europe Observatory hopes that the Commission views the lawsuit as an opportunity to break free from the undue influence of big business interests and develop an alternative trade policy which prioritises global justice and sustainability over corporate interests.

Endnotes

- 1 In the General Court of the European Union. Application for Annulment of Stichting Corporate Europe Observatory against the European Commission, 15 February 2011.
- 2 Corporate Europe Observatory (2008): Global Europe. An Open Door Policy for Big Business Lobbyists at DG Trade, October, <http://www.corporateeurope.org/global-europe/content/2009/01/open-door-policy-big-business>.
- 3 The partially released letter from Peter Mandelson to BusinessEurope's Director General, Philippe de Buck, dated 18 March 2008, can be downloaded at: <http://www.corporateeurope.org/system/files/files/article/Mandelson%27s+letter+to+BusinessEurope.pdf>.
- 4 Letter from BusinessEurope's Director General, Philippe de Buck to then EU Trade Commissioner, Peter Mandelson, dated 6 March 2008. Obtained through access to documents requests under the information disclosure regulation.
- 5 Final table of priority barriers for India. Obtained through access to documents request under the information disclosure regulation. This list was developed by the EU delegation and the commercial and economic counsellors of the EU member states in India over the course of 2008 and endorsed by the trade committee of the EU member states in Brussels in March 2009. It is an open list that is to be revised regularly. Additional information on the issues can be found in the EU's trade barriers database, http://mkaccdb.eu.int/madb_barriers/barriers_select.htm.
- 6 Official from the department of commerce, quoted in: Poultry Import Curbs to Remain for Now, The Economic Times, 10 May 2010, <http://economictimes.indiatimes.com/news/economy/foreign-trade/Poultry-import-curbs-to-remain-for-now/articleshow/5911143.cms>.
- 7 European Commission: DRAFT Minutes. Meeting of the Market Access Advisory Committee – 28 February 2008, DG TRADE G1/MP MAAC, dated 6 March 2008. Obtained through access to documents requests under the information disclosure regulation.
- 8 Corporate Europe Observatory/ India FDI Watch (2010): Trade Invaders. How Big Business is Driving the EU-India Free Trade Negotiations, September, <http://www.corporateeurope.org/global-europe/content/2010/09/eu-india-trade-invaders>.
- 9 Last chance to prevent onslaught on people's rights and livelihoods! Indian and European civil society groups call for an immediate halt to the India-EU trade negotiations, 8 December 2010, <http://www.corporateeurope.org/global-europe/content/2010/10/call-halt-eu-india-fta-talks>.
- 10 MEP letter to Karel de Gucht, EU-India Summit and EU-India FTA negotiations, 1st December 2010, <http://62.149.193.10/wide/download/MEP%20open%20letter%20final.pdf?id=1328>.
- 11 Open Letter: MEPs called upon to protect EU transparency, 28 January 2011, http://www.access-info.org/documents/Access_Docs/Advancing/EU/Letter_MEPs_28_Jan_2011.pdf.