



European Ombudsman

Directorate of Inquiries

Ms Suzy Sumner

info@foodwatch.international

Strasbourg, 09/03/2022

Decision concerning complaint 2113/2021/LDS against the European Commission

Dear Ms Sumner,

On 30 November 2021, *foodwatch e.V.* submitted a complaint to the Ombudsman. The complaint concerns the alleged lack of proactive transparency of EU-Canada Comprehensive Economic and Trade Agreement (CETA) committee decision-making. I am sorry that we have not come back to you earlier.

In your complaint, you argue that CETA committees, staffed with representatives from Canada and the European Commission, negotiate the implementation of CETA behind closed doors, despite the potentially far-reaching impact these negotiations may have on EU rules in the area of public health.

You refer to several requests for access to documents related to CETA committee meetings that you filed between 2020 and 2021.¹ In its responses, the Commission noted that some of the documents falling within the scope of these requests, that is agendas and reports of CETA committee meetings, are already made available on a dedicated website.² The Commission granted partial access to preparatory material and annotated agendas that are not currently published.³ As for the redactions carried out in some documents, the Commission argued that these were necessary for the protection of the public interest as regards international relations and the protection of personal data.

¹ GestDem 2020/1421, GestDem 2020/7932, GestDem 2020/7707, GestDem 2020/7933, GestDem 2020/5411, and GestDem 2021/821.

² GestDem 2020/1421, 2020/5411, and 2021/821. See <https://trade.ec.europa.eu/doclib/press/index.cfm?id=1811>.

³ For example, GestDem 2020/7933.



One of the Commission's confirmatory decisions is subject to an action for annulment before the General Court.⁴ Another one was brought to the Ombudsman and handled as complaint 1264/2021/ABZ.⁵

You argue that the documents the Commission proactively publishes on its dedicated website do not provide sufficient insight into the activities of CETA committees. You also consider that the redacted documents disclosed by the Commission following your access to document requests do not allow interested parties to understand the content of the committees' discussions. Additionally, you believe that "*documents that clearly must exist*", such as correspondence with stakeholders, have not been identified by the Commission. In your opinion, all the above goes against the commitment of the Commission in its Communication 'Trade for All', according to which "*transparency should apply at all stages of the negotiating cycle from the setting of objectives to the negotiations themselves and during the post-negotiation phase*".⁶

There is a presumption of truthfulness for a claim by the institutions that a document does not exist.⁷ In your complaint, you do not put forward any evidence to rebut this presumption. A suspicion that other documents may exist than those identified by the Commission in reply to some of your requests for documents does not warrant an inquiry into the general issue of the Commission's pro-active transparency policy in relation to CETA committees.

The majority of the documents falling within the scope of your access to document requests are already published on a dedicated website regularly updated by the Commission. This includes the provisional agendas of CETA committee meetings, which are uploaded ahead of meetings, as well as final versions of the agendas and meeting reports. Recommendations, decisions and statements of the CETA Joint Committee are also published following their adoption. In light of this, it is not apparent that the Commission's publication policy does not provide sufficient insight about issues discussed by the CETA committees.

Finally, concerning the redactions made in some of the documents that you received from the Commission, I would like to recall that in case 1264/2021/ABZ the Ombudsman found that the Commission was justified in partially refusing public access to the documents requested.⁸ The Ombudsman reached this decision on the grounds that the Commission was not manifestly wrong to consider that disclosing the relevant redacted parts could undermine the EU's international relations.

⁴ GestDem 2020/7707, see Case T-643/21, *Foodwatch v. Commission*, filed on 5 October 2021 (pending) at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62021TN0643>.

⁵ GestDem 2020/7932.

⁶ https://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf.

⁷ Case T-468/16, *Verein Deutsche Sprache v Commission*, ECLI:EU:T:2018:207, paragraph 35, and Decision in case 1686/2017/THH on the European Commission's handling of a request for public access to documents on industry lobbying on the Preparatory Action on Defence Research and the EDRP, <https://www.ombudsman.europa.eu/it/decision/en/98786>.

⁸ <https://www.ombudsman.europa.eu/en/decision/en/152812>.



As a result of the above considerations, I regret to inform you that the Ombudsman does not find sufficient grounds to open an inquiry⁹.

The Ombudsman recognises the importance of proactive transparency in relation to CETA committee decision-making. Public debate on the merits of international agreements is of vital importance, as it allows the public to scrutinise and have its say on the outcome of the decision-making processes at the EU level, which affect them directly.

While I appreciate that you may be disappointed with this outcome, I thank you for having brought this matter to the Ombudsman's attention.

Yours sincerely,

Rosita Hickey
Director of Inquiries

⁹ Full information on the procedure and rights pertaining to complaints can be found at <https://www.ombudsman.europa.eu/en/document/70707>.