

THE EU OMBUDSMAN'S INQUIRY INTO TRANSPARENCY AND PUBLIC PARTICIPATION IN THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP (TTIP)¹

The EU Ombudsman's Inquiry

- 1. Ombudsman's observations when initiating the Inquiry**
- 2. EC's Response to Ombudsman's Initial Comments**
- 3. Observations in the Ombudsman's Final Report**
- 4. The Ombudsman's interpretation of the exception to disclosure**
- 5. The Ombudsman's 10 Final Recommendations**

Annexes

- A. EC Regulation regarding public access to documents
- B. TPPA Confidentiality Agreement
- C. Standard Confidentiality Cover Note on TPPA (leaked) Documents
- D. TTIP Confidentiality Agreement
- E. List of EU Proposals for legal text released as of 7 January 2015
- F. List of EU Position Papers released as of 7 January 2015
- G. List of EU Fact Sheets released as of 7 January 2017

The EU Ombudsman Emily O'Reilly launched a public consultation on transparency in TTIP on her own initiative on 29 July 2014 and delivered her decision on 6 January 2015.² More than 315 submissions and 6000 emails were received during the public consultation.

1. OMBUDSMAN'S OBSERVATIONS WHEN INITIATING THE INQUIRY

On 29 July 2014 the Ombudsman wrote to the Secretary-General of the Council of Europe, setting out her initial views of the matter, in particular requests for release of the EC's negotiating mandate from the EU:³

- The TTIP negotiations “are of significant public interest given their potential impact on the lives of citizens”.

¹ Prepared by Professor Jane Kelsey, Faculty of Law, The University of Auckland, New Zealand, 31 January 2015

² European Ombudsman, “European ombudsman launches public consultation in relation to the transparency of the Transatlantic Trade and Investment Partnership (TTIP) negotiations”, Case: OI/10/2014/RA,

<http://www.ombudsman.europa.eu/cases/correspondence.faces/en/56100/html.bookmark>;

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>

³ European Ombudsman, “Ombudsman asks Council and Commission to publish more TTIP documents”, Press release No. 17/2014,

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

European Ombudsman, “Letter to the Council of the EU requesting an opinion in the European Ombudsman's own-initiative inquiry OI/11/2014/MMN concerning transparency and public participation in relation to the Transatlantic Trade and Investment Partnership”, 29 July 2014,

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

- Her particular concern was “the extent to which the public can follow the progress of these talks and contribute to shaping their outcome”.
- The ultimate goal of the inquiry was “to enhance the legitimacy of the TTIP negotiations in the eyes of citizens”.
- The European Commission’s mandate to negotiate on behalf of the European Union had not been published proactively by the European Council, and the Council had not reacted positively to any application for public access to the document. It would be unduly formalistic to ignore the availability of (leaked) documents on the Internet.
- A high level of transparency on the aims and objectives is a precondition to a successful outcome of negotiations.
- The Court of Justice⁴ had observed that a lack of information and debate can create doubts among citizens over the legitimacy of the decision making process, and a proactive approach to transparency can enhance the prospects of success by enhancing its legitimacy.
- Certain documents may need to remain confidential during international negotiations, but the justification for withholding them under relevant EU law⁵ “must be specific in nature, relating to the content of a document and the negotiating context, with particular emphasis on the timing of disclosure” (meaning when, rather than if).
- It is not immediately apparent how disclosure of the general mandate for negotiations would undermine the protection of any of the public or private interests provided for in the disclosure of information regulation.⁶
- The Council’s concern that release of the mandate might create a precedent for the TTIP or other negotiations was misplaced because every request (and document) must be treated on its merits.
- The public disclosure of the mandate one year after it was adopted would not
 - Damage mutual trust between the negotiators
 - Inhibit the development of free and effective discussion in the context of the negotiations
 - Reveal strategic elements of the negotiations to the other negotiating party or third parties, given the EU can be assumed to have communicated its position to the US and other third parties.

⁴ Case C-64/05 P, *Sweden v Commission*, [2007] ECR I-11389.

⁵ 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, Article 4

⁶ <http://www.ombudsman.europa.eu/cases/correspondence.faces/en/54634/html.bookmark>

- It was difficult to see how disclosure of the negotiating directives would undermine the protection of the public interest as regards international relations.
- The Ombudsman recommended publication of the negotiating directives for the ongoing TTIP negotiations and practical measures to enable timely public access to TTIP documents.

2. THE COMMISSION'S RESPONSES TO THE OMBUDSMAN'S INITIAL COMMENTS⁷

- The European Commission recognised that access to documents is not only a right, but is also good policy. Maximising transparency around the TTIP negotiations is important to inform EU citizens, allay fears and build a wider base of support for the on-going talks.
- The EC would provide more extensive access to TTIP documents, notably making available to the public the negotiating texts it had already shared with Member States and Parliament. Opening market access offers would not be disclosed.
- The Commission could still withhold requested documents whose release could otherwise harm EU international relations, provided it fell within the Article 4 Exception.
- There "*should be no intention to publish any US documents or common negotiating documents without the explicit agreement of the US.*"⁸
- All MEPs would have broad access to documents under secure conditions, but not to the joint consolidated US-EU texts on TTIP.
- The Commission saw certain advantages in making available on the website documents that were released in response to access requests, subject to development of IT tools. The cross-cutting nature of TTIP and other negotiations requires reflection on broader publication of such documents.
- The Commission agreed to publish regularly on its dedicated website a list of unclassified TTIP documents that are shared with the European Parliament and Council, but the release of the documents would be assessed on a case by case basis. It would consider including classified documents on the list.

⁷ European Commission, "Comments of the Commission on the European Ombudsman's own-initiative inquiry – Ref. OI/10/2014/RA", 25 November 2014; European Commission, 'Communication to the Commission concerning Transparency in TTIP negotiations', 25 November 2014, C(2014) 9052(final), http://ec.europa.eu/news/2014/docs/c_2014_9052_en.pdf; 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>

⁸ European Commission, 'Communication to the Commission concerning Transparency in TTIP negotiations', p. 2

- The Commission would ask business organisations, lobby groups and NGOs whether papers they submit can be published in full or provide a non-confidential version.
- The Commission had already agreed that all contacts and meetings with professional organisations or self-employed individuals on matters relating to EU policy making and implementation would be made public.
- The Commission had a practice of sharing negotiating documents with the European Parliament and the Council. For TTIP it also shared the EU's documents that have been seen by the Member States and the Parliament with a TTIP Advisory Group of experts from different organisations. The Commission considered this was a group of experts and could not be considered privileged stakeholders.
- The Commission shared the Ombudsman's concern over the 'steady stream of leaks' of TTIP documents.
- Member States and MEPs had access to consolidated texts that contain positions of the US and EU in a reading room. It does not believe the level of risk associated with the unauthorised disclosure of documents justified upgrading the level of classification of the information and would impede participation.

3. OBSERVATIONS IN THE OMBUDSMAN'S FINAL REPORT⁹

On 7 January 2014 the Ombudsman's final report recognised the European Commission had made 'real efforts' to be more transparent but had not gone far enough. She recommended that that common negotiating texts were made available to the public before the agreement was finalised. The following are key quotes from her report:

- **Old practices are not appropriate:** *Traditional methods of conducting international trade negotiations, however, are characterised by confidentiality and limited public participation. 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.* (para 9)
- **The Commission should assume release:** *[T]he Commission needs a process that has, as its underlying assumption, that the public wants access to all TTIP documents. ...* (para 27)

⁹ European Ombudsman, *Decision of the Ombudsman*, <http://www.ombudsman.europa.eu/cases/decision.faces/en/58668/html.bookmark>; see also European Ombudsman, "Further steps to increase TTIP transparency necessary", 7 January 2015, Press release 1/2015, <http://www.ombudsman.europa.eu/en/press/release.faces/en/58669/html.bookmark>;

- **The ACTA precedent:** *Given the fate of the ACTA (Anti-Counterfeiting Trade Agreement), the Ombudsman believes that considerations of effectiveness should also lead the Commission to take these suggestions on board as the negotiations proceed. (para10)*
- **Proactive assessment of release of TTIP documents:** *The Commission should carry out an assessment as regards whether a TTIP document can be made public as soon as the document in question has been finalised internally and at regular and pre-determined intervals thereafter (including, but not limited to, when the document is tabled in the negotiations). If no exception applies, the document in question should be published proactively by the Commission. If a document cannot be made public proactively, the document reference (and, if possible, its title) should be made public, along with an explanation as to why the document cannot be made available. (para 27)*
- **Confidentiality must be justified:** *[T]he Commission needs to create a context in which it can negotiate effectively with the US on TTIP, so as to deliver the best possible deal for the Union and its citizens. This may mean that the Commission can legitimately keep confidential certain information and documents, at least during certain stages of the negotiations. However, in order to uphold the legitimacy of the negotiating process, any policy of non-disclosure must be duly justified. (para 13)*
- **Exception must be interpreted restrictively:** *It is ... appropriate to underline that the Commission must interpret any exceptions to the fundamental right of public access to documents restrictively. If it chooses to refuse to grant public access to TTIP documents, the Commission 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.¹⁰ (para 14)*
- **Disagrees with the EC's view that documents should only be published with US agreement:** *[T]he Commission also stated that there “**should be no intention to publish**” any US documents or common negotiating documents without the explicit agreement of the US. While ... the Ombudsman cannot, without having seen specific documents, guide the Commission as to precisely which documents should or should not be made public, it is necessary to take a view on the above statement.” (para 15, original emphasis)*
- **The Commission must consult on release of 3rd parties' documents:** *EU rules on public access to documents provide, in relation to third-party documents, such as documents originating from the US, for the third party to be consulted with a view to assessing whether an exception to public access applies, unless it is clear that the document shall or shall not be disclosed. There is nothing to stop the Commission from choosing to consult with the US also in*

¹⁰ <http://www.ombudsman.europa.eu/cases/decision.faces/en/58668/html.bookmark>

relation to release documents drawn up with US negotiators, such as common negotiating documents. (para 16)

- **The consolidated draft text is not third party document:** Consultation is required under the EU regulation and the confidentiality agreement regarding third-party documents. However, joint documents including the consolidated text are not third party documents. (fn 10)

- **US objections must be reasonable, for legitimate public interest and are not decisive.** *The Commission ... is always legally obliged to comply with the rules on public access to documents set out in Regulation 1049/2001. [The confidentiality letter] does not contain any commitment on the side of the EU, which would limit the full application [of the regulation]...*

*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 legitimate interests of the international partners. However, no public interest as regards international relations exists in complying with unreasoned or unreasonable requests not to disclose documents. To consider otherwise would imply that the international partner would have unfettered veto over the disclosure of **any** such document in the possession of the EU institutions. (paras 19-20, original emphasis)*

- **The US needs to justify its opposition with reasons that are based on its legitimate interests of the US:** *[I]f 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. ... The Commission should also inform the US of the need to justify any request by them not to disclose a given document. The Commission needs to be convinced by this reasoning. (para 21-22)*

- **US opposition is not sufficient grounds for exception:** *[T]he mere fact of US displeasure that a document would be released, is not sufficient to activate the exception in relation to undermining the public interest as regards international relations. (para 21)*

- **EC must inform US of making common texts available to the public:** *[I]t 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. ...*

Early publication of common negotiating texts would allow for timely feedback to negotiators in relation to sections of the agreement that pose particular problems. The Ombudsman assumes that it is preferable to learn of such problems sooner rather than later, so they can be tackled effectively. (para 22-23, original emphasis)

4. THE OMBUDSMAN'S INTERPRETATION OF THE EXCEPTION TO DISCLOSURE

The relevant exception to disclosure in Article 4 of Regulation 2049/2001 is set out in Annex A below. Disclosure must be refused where it would '*undermine the protection of the public interest as regards ... international relations*'. The Ombudsman provided the following guidance to interpreting that provision:

- **Treat each document on its merits:** There is no blanket justification for withholding a broad category of documents. The release of documents in each case must be treated on its merits. That also means that release of a document does not establish a broad precedent for all TTIP documents or other negotiations. (para 19)
- **Disclosure must be shown to undermine the public interest.** Exception to public access as regards international relations does not apply simply because the subject matter of a document *concerns* international relations. Rather, the wording of the exception make it necessary to show, based on the content of a requested document, that its disclosure would *undermine* the public interest as regards international relations.(para 19)
- **Significance of the subject (TTIP) is relevant:** The General Court had found that the importance of the matter to which requested documents relate is relevant in determining whether their disclosure would really cause harm.¹¹
- **Relevant parts of document only:** The exception only applies to the relevant parts of the document.
- **Relevant time period only:** The exception only applies for the period for which the protection is justified because of its content. (para 14)
- **Release of EC negotiating mandate:** The public disclosure of the leaked document would not
 - Damage mutual trust between the negotiators
 - Inhibit the development of free and effective discussions in the context of the negotiations, or
 - Reveal strategic elements of the negotiations to the other party or third parties.

Further, "one would assume that the EU has, at this stage, communicated to the US, and indeed to other third parties, what it believes should be negotiated upon in the context of TTIP. As such it is difficult to see how disclosure of the negotiating objectives would undermine protection of this interest."¹²

¹¹Letter to the Council of the EU requesting an opinion in the EU Ombudsman's own-initiative inquiry OI/11/2014/MMN concerning transparency and public participation in relation to the Transatlantic Trade and Investment Partnership (TTIP) negotiations, 29 July 2014, (<http://www.ombudsman.europa.eu/cases/correspondence.faces/en/54634/html.bookmark>) citing Case T-233/09 Access Info Europe v Council [2011] ECR 11-73, paragraph 74.

¹² Letter to the Council of the EU, p.2

5. THE EU OMBUDSMAN'S 10 FINAL RECOMMENDATIONS¹³

The final report of the EU Ombudsman made 10 recommendations relating to:

- public access to consolidated negotiating texts,
- greater proactive disclosure of TTIP documents, and
- increased transparency as regards meetings that Commission officials hold on TTIP with business organisations, lobby groups or NGOs.

1. Inform the US of the importance of making, in particular, common negotiating texts available to the EU public before the TTIP agreement is finalised. *The Commission should also inform the US of the need to justify any request by them not to disclose a given document. The Commission needs to be convinced by this reasoning.*

2. Carry out an assessment as regards whether a TTIP document can be made public as soon as the document in question has been finalised internally and at regular and pre-determined intervals thereafter (including, but not limited to, when the document is tabled in the negotiations). *If no exception applies, the document in question should be published proactively by the Commission. If a document cannot be made public proactively, the document reference (and, if possible, its title) should be made public, along with an explanation as to why the document cannot be made available.*

3. Ensure that the list of TTIP documents to be made available on its dedicated website on trade policy is comprehensive.

4. Publish on its website the many TTIP documents it has already released in response to access to documents requests.

5. Take into account the relevant suggestions outlined in the 'Public participation' section of the Ombudsman's public consultation report.

6. Extend the transparency obligations in relation to meetings with professional organisations or self-employed individuals, in the context of TTIP, to the levels of Director, Head of Unit and negotiator. *This should include the names of all those involved in such meetings.*

7. Proactively publish meeting agendas and records of meetings it holds on TTIP with business organisations, lobby groups or NGOs.

8. Examine how to extend, to levels below the level of Commissioner, the obligations (including in relation to the Transparency Register) aimed at ensuring an appropriate balance and representativeness in its meetings with professional organisations or self-employed individuals on TTIP. *These obligations might, for example, be extended to the levels of Director, Head of Unit and negotiator.*

¹³ Decision of the EU Ombudsman; Summarised in Press release No. 1/2015, 7 January 2015

9. Confirm that **all submissions from stakeholders made to it in the context of TTIP will be published** unless the sender gives good reasons for confidentiality and provides a non-confidential summary for publication.

10. Ensure that **documents that are released to certain third party stakeholders are released to everyone**, thereby ensuring that all citizens are treated equally.

ANNEXES

Annex A: Relevant provisions in 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.

Annex B: Confidentiality agreement between TPPA Parties, held by the New Zealand Government as Depository for the TPPA:¹⁴

The relevant extracts read:

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. 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.

Annex C. Standard Confidentiality Cover Note on (leaked) TPPA Documents

The standard cover note on leaked TPPA documents 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.¹⁵

¹⁴ <http://www.mfat.govt.nz/downloads/trade-agreement/transpacific/TPP%20letter.pdf>

¹⁵ eg. TPP, 'Regulatory Coherence', undated, <http://www.citizenstrade.org/ctc/wp-content/uploads/2011/10/TransPacificRegulatoryCoherence.pdf>

Annex D: The TTIP Confidentiality Agreement

The relevant part of the document reads:

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.¹⁶

(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

¹⁶'Arrangements on TTIP negotiating documents', 5 July 2013, http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151621.pdf

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.

Annex E: EC Proposals for Legal Text released as of 7 January 2015

(<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1231>)

Texts contain “language and binding commitments the EU would like to see”.

Texts released are initial proposals tabled for discussion with the US in negotiating rounds.

Texts relate to TTIP part 2 (regulatory cooperation) and part 3 (rules), not market access.

The Commission commits to publish further texts ‘as they become available’ (criteria for availability is not clear).

The release of these texts is the first time the Commission has made public such proposals in bilateral trade talks.

Subjects:

- Regulatory coherence (available early 2015)
- TBT
- SPS
- Customs and Trade Facilitation
- SMEs
- Competition – Anti-trust and mergers
- Competition – SOEs
- Competition – Subsidies
- Government-Government Dispute settlement

Annex E: List of EC Position Papers released as of 7 January 2015

- financial services
- public procurement
- regulatory coherence
- TBT
- SPS
- Chemicals
- Chemicals – outline
- Chemicals - examples

- Cosmetics
- engineering
- Pharmaceuticals
- Textiles
- Vehicles
- Vehicles - examples
- Sustainable development
- Sustainable development – issues, provisions
- Energy and raw materials

Annex F. List of EC Fact Sheets released as of 7 January 2017

2 page factsheets ‘in plain language’

Market access:

- Trade in goods and customs duties
- Services
- Public services
- Culture
- Public procurement
- Rules of origin

Regulatory Cooperation

- Regulatory coherence
- TBT
- SPS
- Chemicals
- Cosmetics
- Engineering
- Medical Devices
- ICT
- Pharmaceuticals
- Textiles
- Vehicles

Rules

- Sustainable development
- Energy and raw materials
- Customs and trade facilitation
- SMEs
- Investment protection and ISDS
- Investment protection and ISDS (2 pages)
- Investment protection and ISDS (8 pages)
- Competition
- IP and GIS
- Government-Government Dispute Settlement