

September 30, 2015

The Honorable Michael Froman
United States Trade Representative
600 17th St. NW
Washington, DC 20508

Dear Ambassador Froman,

The undersigned organizations, dedicated to government openness, scientific integrity, and accountability, write to express our concern about the recent decision to appoint the Office of the U.S. Trade Representative's (USTR) general counsel Tim Reif as its new, congressionally-mandated "transparency officer." We urge the USTR to reconsider the decision to appoint its General Counsel to this role and appoint a transparency officer who does not have any structural conflicts of interest in promoting transparency at the agency.

Our concern does not arise from the appointment of general counsel Tim Reif personally. He is a well-respected public servant. Rather, there is an inherent structural conflict of interest between the role of general counsel, whose role is to defend the agency's existing practices, and the role of the new U.S. Trade Representative transparency officer, a position that Congress established in the Fast Track legislation to alter and improve what many in Congress consider an unacceptable lack of transparency by this administration with respect to trade policy in general and the TPP specifically. It is unclear to us how the same USTR staff person whose remits include, defending to Congress the agency's unwillingness to make draft texts available to the public and, to date, certain congressional staff, and defending USTR denials of Freedom of Information Act requests for trade pact texts and information, can also serve as the internal USTR advocate for new transparency improvements, which was Congress' intent in the legislation establishing this position.

Appointing USTR's own general counsel to the Fast Track-mandated transparency officer position raises concerns about the USTR's commitment to the principle of transparency that the legislation intended to address. This decision is especially troubling in light of years of public, congressional and press demands that USTR at a minimum restore the transparency practices of past administrations. Indeed, the broad scope of domestic non-trade policies included in trade pacts like the TPP and Transatlantic Trade and Investment Partnership (TTIP) requires an even greater access to texts and more openness.

In February 2012, many of our organizations wrote to President Obama to urge him to increase the transparency of the Trans-Pacific Partnership (TPP) negotiating process. At that time, we pointed out that without any public access to even the most fundamental draft agreement texts and other documents, executive branch trade officials were making important policy decisions that may significantly affect the way we live our lives by limiting our public protections.

We pointed out that, in contrast to the Administration's commitment to creating an "unprecedented level of openness in Government" and its launch of the Open Government Partnership, multiple aspects of the TPP negotiations process utterly fail to meet the most basic standards of transparency. We called on the Administration to, at a minimum, provide access at regular intervals to the draft composite negotiating texts of the pact's various chapters for all congressional staff, the public, and the press. The USTR failed to respond to these basic transparency demands in the three and a half years since we sent that letter, and now claims to be in the "end game" of the TPP negotiations.

Moreover, many members of Congress, disturbed by the secrecy of the negotiations, have consistently raised similar concerns demanding public access to draft composite negotiating texts through numerous letters and pieces of legislation. Congress' unease is reflected in the requirement for USTR to appoint a transparency officer, as noted above.

In light of these expressed concerns, we again urge the USTR to reconsider its appointment of Tim Reif as transparency officer. We also strongly urge the USTR to heed the calls of Congress, the public and the press, and to immediately change its practice of conducting its trade negotiations under the cloak of secrecy. The U.S. government should at least make public its own textual negotiating positions in other ongoing negotiations, such as the TTIP, where the European Union has made its textual negotiating positions public. This would be an important first step toward agreeing with trading partners to make draft composite negotiating texts public after each negotiating round.

Please do not hesitate to contact Patrice McDermott, Executive Director of OpenTheGovernment.org, with any questions. She can be reached at pmcdermott@openthegovernment.org or 202.332.6736.

Thank you.

Sincerely,

Organizations

Bill of Rights Defense Committee

Center for Effective Government

Common Cause

Cyber Privacy Project

Defending Dissent Foundation

Demand Progress

Electronic Frontier Foundation

Government Accountability Project

Media Freedom Foundation

OpenTheGovernment.org

Project Censored

Project On Government Oversight

Public Citizen
Rootstrikers
Sunlight Foundation
Student Press Law Center
Society of Professional Journalists

Individuals

Jonathan Fox, American University*
David S. Levine, Elon University and Princeton Center for Information Technology Policy*
Kevin Zeese and Margaret Flowers, Popular Resistance
Mackenzie MacDonald Williams, Flush The TPP

*Affiliations for identification purposes only