

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ED BRAYTON,)
110 Sutherland Drive)
Stanton, MI 48888,)
)
Plaintiff,)
)
v.)
)
OFFICE OF THE UNITED STATES)
TRADE REPRESENTATIVE,)
600 17th Street, N.W.)
Washington, D.C. 20508,)
)
Defendant.)
_____)

Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This action is brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to compel the Office of the United States Trade Representative (“USTR”) to produce a copy of the compensation settlement agreement between USTR (on behalf of the United States) and the European Union (“EU”) announced by USTR on December 17, 2007. That agreement was reached in response to the United States’s decision to invoke Article XXI of the World Trade Organization’s General Agreement on Trade in Services (“GATS”) to amend the U.S. schedule of commitments under GATS to exclude the U.S. gambling and betting sector. Although USTR publicly announced the settlement, it has not released the text of the settlement to the public.

JURISDICTION

2. This Court has jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

3. Plaintiff Ed Brayton is a fellow in the New Journalist Program of The Center for Independent Media (“CIM”), a nonprofit 501(c)(3) organization that fosters a diversity of ideas in national debate by educating and training people on the use of new communications technologies such the Internet as an alternative to traditional broadcast and print media. Plaintiff is a journalist for the Michigan Messenger, an online publication sponsored by CIM, *see* <http://www.michiganmessenger.com>, and for an online blog called “Dispatches from the Culture Wars.” *See* <http://scienceblogs.com/dispatches>. Brayton has written extensively on the subject of U.S. online gambling restrictions and their implications for international trade.

4. Defendant USTR is an agency of the United States. USTR has possession of and control over the record that plaintiff seeks.

STATEMENT OF FACTS

5. On December 19, 2007, Brayton submitted a FOIA request via electronic mail to USTR requesting “the full text of the settlement between USTR and the European Union regarding America’s online gambling laws.” The request alluded to the fact that the agreement had just been announced publicly by USTR.

6. By letter dated January 28, 2008, signed by Carmen Suro-Bredie, Chief FOIA Officer, defendant USTR denied the request. Ms. Suro-Bredie wrote that “the document you seek is being withheld in full pursuant to 5 U.S.C. § 552(b)(1), which pertains to information that is properly classified in the interest of national security pursuant to Executive Order 12958.”

7. By letter dated February 21, 2008, Brayton submitted an administrative appeal of USTR’s denial of his FOIA request, questioning USTR’s assertion that the settlement was

exempt from disclosure. Brayton's appeal explained: "The document in question does not deal with any issues of national security or foreign policy," but "deals with a negotiated settlement of a trade dispute involving purely domestic policy in the US." Brayton's appeal continued: "[T]he settlement almost certainly entails a substantial financial cost to American taxpayers, either in direct payments as restitution to other nations or as a result of allowing them to enact trade barriers and tariffs against American goods and services in order to balance off the negative effect of our online gambling laws. Analysts have estimated that the cost could be in the tens of billions of dollars to American taxpayers, who surely have a legitimate right to know what kind of trade settlements their government is cutting with other countries at our expense." Brayton found it "virtually inconceivable that the release of that settlement to the public could possibly harm national security in any way."

8. By letter dated March 25, 2008, signed by Mark Linscott, Chair, Freedom of Information Appeals Committee, USTR rejected Brayton's administrative appeal. Mr. Linscott explained that the agency's appeals committee had "determined that the document was properly withheld in full pursuant to 5 U.S.C. § 552(b)(1)" because it was properly classified pursuant to paragraph 1.4(b) of Executive Order 12958, as amended by Executive Order 13292. That paragraph provides that "foreign government information" must be treated as "classified national security information." As Linscott's letter explained: "Executive Order 13292 defines 'foreign government information' as information provided to, or received from, a foreign government or international organization under an agreement that it will be held in confidence." The letter stated that the document Brayton requested "contains an agreement between the United States and the European Union entered into as part of a multinational process under the purview of the

World Trade Organization (WTO).” According to USTR, “[t]he WTO rules governing this process require that such documents must be held in confidence. Therefore, the document is ‘foreign government information’ properly classified under Executive Order 12958, as amended by Executive Order 13292.”

CLAIM FOR RELIEF

9. Plaintiff has a statutory right under FOIA to the record he seeks. USTR’s contention that the document it is withholding is exempt from disclosure under 5 U.S.C. § 552(b)(1) is contrary to law, as that document is not properly classified pursuant to the applicable Executive Order. It is therefore improper for USTR to withhold the record on this basis.

PRAYER FOR RELIEF

Plaintiff requests that this Court:

- (1) Declare that defendant’s withholding of the requested record is unlawful;
- (2) Order defendant to make the requested record available to plaintiff;
- (3) Award plaintiff his costs and reasonable attorneys’ fees; and
- (4) Grant all other appropriate relief.

Respectfully submitted,

Bonnie I. Robin-Vergeer
(D.C. Bar No. 429717)
Adina H. Rosenbaum
(D.C. Bar No. 490928)
Brian Wolfman
(D.C. Bar No. 427491)
Public Citizen Litigation Group
1600 20th Street, N.W.
Washington, D.C. 20009
(202) 588-1000
(202) 588-7795 (fax)

Counsel for Plaintiff

Dated: May 19, 2008