

General Council
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TRANSPARENCY IN WTO WORK

Procedures for the Circulation and Derestriction of WTO Documents

Revised Proposals by the United States and Canada

In the light of discussions held with a large number of delegations, the United States and Canada submit for General Council consideration the following elaborated proposal concerned with the circulation of final reports of panels, as well as revised proposals on derestriction of certain WTO documents.

1. Circulation of Information on Final Panel Reports

(a) Proposal

The General Council *decides*:

As soon as the “Findings and Conclusions” portion of a completed final panel report is prepared in all three official languages of the WTO, a final report shall be issued to the parties to the dispute and the “Findings and Conclusions” portion shall be circulated for information purposes as an unrestricted document. In addition, at the same time, pending its translation into the other two official languages of the WTO, the “Descriptive” portion of the final report, shall be made available as an unrestricted document in the original language of the panel report. This decision is without prejudice to the Dispute Settlement Understanding and the working practices concerning dispute settlement procedures agreed by the Dispute Settlement Body and contained in document WT/DSB/6.

(b) Explanatory Comments

Nothing in this proposal affects the DSU - which limits its confidentiality considerations to panel deliberations before the report is finalized and which does not address the issue of whether information on final panel reports can be made available in the way we are seeking. In addition, it should be recalled that footnote 10 and paragraph (h) in the annex of the 1996 Decision (WT/L/160/Rev.1) only serve to make it possible to briefly restrict final panel reports which are otherwise always treated as unrestricted documents once finalized. This possibility has never been invoked.

The proposed decision with respect to the circulation of the “Findings and Conclusions” portion of a completed final panel report is intended to make available accurate information on the outcome of a dispute settlement proceeding much more rapidly than is the case if WTO Members not parties to the dispute and the general public need to await translation into all three WTO languages of the often very lengthy “Descriptive” portion of the report. The proposed decision does not imply changes to the Dispute Settlement Understanding and, as stated, does not affect the official “date of circulation” of a panel report for DSU purposes which would remain the date on which the entire report, including the “Descriptive” portion is “put in the pigeon holes of delegations in all three working languages” (WT/DSB/6).

2. Derestriction Procedures for Certain WTO Documents

Taking into account comments made by a large number of delegations in the course of several rounds of consultations and proposals tabled separately by other delegations, the delegations of the United States and Canada propose the following changes to the derestriction procedures agreed by the General Council in 1996 (WT/L/160/Rev.1).

(a) Documents Submitted by Members

Recognizing that paragraph (g) of the Appendix to WT/L/160/Rev.1 already provides that documents submitted by Members for circulation should normally be issued as unrestricted documents, the General Council should decide to amend paragraph (a) of the Appendix to provide that this shall also be the normal practice in the case of documents from Members circulated in the “W” series. Of course, in both cases, we should preserve the possibility for the Member making the submission to make an exceptional request for restricting the submission, but for a period not, in principle, to exceed six months.

(b) Minutes of Meetings

Paragraph (c) of the Appendix to WT/L/160/Rev.1 should be modified so as to provide that minutes of meetings of all WTO bodies, including Summary Records of Sessions of the Ministerial Conference and Secretariat-produced notes of discussions should be considered for derestriction three months after their circulation in all three WTO languages.

(c) Secretariat Background Notes

Paragraph (a) of the Annex to the 1996 Decision should be modified to provide that Secretariat background notes, except for those which purport to portray the views of WTO Members, shall normally be circulated as unrestricted documents. Recognizing that there may be exceptional cases in which a WTO body, when requesting the Secretariat to prepare a background note, considers it essential that the note be initially considered on a restricted basis, provisions should be made for exceptional restriction of such notes, provided that a maximum time period (e.g. 6 months) should be established for its automatic derestriction if there are no exceptional circumstances.

(d) Marking of Documents Initially Restricted

WTO documents initially issued as restricted documents, but subject to automatic derestriction after a determined time period (e.g. minutes), should be clearly marked on the first page of the document with the anticipated date of derestriction. In the exceptional case where a document is to remain restricted beyond the period foreseen, the Secretariat should issue a notice to this effect.

(e) Further Review of the Decision

As with the original 1996 Decision, the anticipated revised Decision should be reviewed again after two years.
