

**General Council  
16 February 1999**

## **REVIEW OF PROCEDURES FOR THE CIRCULATION AND DERESTRICTION OF WTO DOCUMENTS**

### Note by the Secretariat on Proposals made by Delegations

#### Revision

This note reflects the present state-of-play of the discussions and reproduces the written proposals of US/Canada (WT/GC/W/106), the European Communities (WT/GC/W/92), and Mexico (WT/GC/W/113), as well as the oral proposals for changes in the Procedures for the Circulation and Derestriction of WTO Documents (WT/L/160/Rev.1) which have been made by delegations in the course of discussions during the October General Council meeting.

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#### **I. GENERAL**

##### **(a) Mexico**

Making it clear in the main text of the General Council Decision that if they are to be derestricted, documents must be available in Spanish, French and English.

Giving greater meaning and operability to footnote 2 of the General Council Decision.

##### **(b) United States and Canada**

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.

##### **(c) Indonesia on behalf of ASEAN Members**

Transparency meant access to information without undermining confidentiality principles. In attempting to enhance transparency, Members should ensure that the intergovernmental and contractual nature of the WTO was not compromised.

##### **(d) Switzerland**

In favour of unrestricted circulation of WTO documents to the greatest extent possible, provided that delegations had the opportunity to protect politically sensitive documents, which was presently the case.

(e) Japan

A balance had to be struck between the effort to improve the transparency of the organization and the need to preserve its intergovernmental character as a forum for negotiation.

**II. PARAGRAPH 7**

(a) United States and Canada

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

**III. APPENDIX**

**1. Item (a)**

(i) *Secretariat Background Notes*

(a) United States and Canada

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 bases, 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.

(b) European Communities

Secretariat background notes are intended to provide factual information and not to represent the collective views of WTO Members. All such notes should therefore be circulated on a non-restricted basis. 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 confidential basis. This may be allowed, as an exception to the general rule of derestriction, provided that a maximum time period (e.g. 6 months) is established for its automatic derestriction.

(c) Indonesia on behalf of ASEAN Members

Secretariat background notes, when they provided factual information and did not represent collective or individual views of Members, could be circulated as unrestricted documents. However, a Secretariat background note could be circulated as restricted if there was a consensus thereto.

(d) Argentina

Secretariat background notes could be derestricted 15 days after circulation if no request to the contrary had been received by the Secretariat.

(e) Switzerland

Present procedures should continue to apply to working documents of the WT/BFA/SPEC/-series and Balance-of-Payments documents.

(f) Japan

Provisions to maintain the necessary confidentiality of these documents would have to be made clear.

(ii) *Documents Submitted by Members*

(a) United States and Canada

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) European Communities

Documents submitted by a WTO Member should be circulated as unrestricted, including those which are currently classified as working documents. On an exceptional basis, a Member may indicate to the Secretariat that a document be circulated on a restricted basis. In such case, however, the document should be automatically derestricted after the expiry of a period of time (e.g. 6 months).

(c) Indonesia on behalf of ASEAN Members

With regard to documents submitted by WTO Members, procedures under paragraph (a) of the Appendix of WT/L/160/Rev.1 could be modified to allow for the same rules as in paragraph (g), according to which documents submitted by WTO Members, other than in the "W" series, were circulated as unrestricted unless otherwise stated by the Member concerned, and would be considered for derestriction at the end of each six-month period.

(d) Japan

Provisions to maintain the necessary confidentiality of these documents would have to be made clear.

(iii) *Meeting Agendas*

(a) European Communities

Meeting agendas should be immediately derestricted.

(b) Indonesia on behalf of ASEAN Member States, and Egypt

Agendas of meetings should be derestricted only after adoption by Members.

(iv) *Other working documents*

(a) European Communities

Working documents of a draft nature, such as decisions and proposals: Consideration could be given to procedures to facilitate earlier derestriction of such documents after the expiry of a reasonable period of time.

**2. Item (b)**

(a) Mexico

Adding, in subparagraph (b) of the Appendix to the General Council Decision, documents relating to the modification of schedules of commitments under Article XXI of the General Agreement of Trade in Services (GATS).

**3. Item (c)**

(a) United States and Canada

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.

(b) European Communities

Minutes are prepared under the responsibility of the Secretariat and provide essential information about WTO activities. Minutes should therefore be circulated on an unrestricted basis. Exceptions would be made for a limited number of WTO bodies which, by their very nature, require a certain degree of confidentiality in proceedings.

(c) Indonesia on behalf of ASEAN Members

"Member-approved" minutes of meetings in their final version could be derestricted after three months. Exact procedures for achieving final Member-approved minutes of meetings should be defined. This rule would not apply to certain WTO bodies which, by their nature, required a certain degree of confidentiality in their proceedings.

(d) Switzerland

Possibility of restricting such documents, as provided in WT/L/160/Rev.1, should remain.

(e) New Zealand

Once categories of documents like minutes had been circulated to Members in the three WTO languages, there were no compelling reasons for maintaining any additional period for derestriction.

**4. Item (e)**

(a) European Communities

Documents relating to Working Parties on Accession submitted by the acceding country could be subject to earlier derestriction if the acceding country so indicates to the Secretariat.

**5. Item (h)<sup>1</sup>**

(a) United States and Canada

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) European Communities

Panel reports should be immediately derestricted upon their circulation to all WTO Members. Other aspects relating to transparency in WTO dispute settlement should be considered within the framework of the DSU review.

(c) Egypt

Final panel reports should be derestricted once available in all official languages.

(d) Argentina

Agree with the US/Canada proposal but for practical reasons, Members should find a formula to ensure that the parties had such information at least a few days or a few hours before the press, so that they could inform their governments appropriately and explain to the public and to their national institutions the meaning of the different decisions.

(e) Jamaica and Colombia

With respect to the distribution sequence of final panel reports, thought should be given to the role of third parties.

**IV. SCOPE OF THE PROCEDURES**

(a) European Communities

It should be noted that procedures for derestriction only apply to official WTO documents. The procedures do not apply either to the Plurilateral Trade Agreements, although the Community would favour their adoption by the competent bodies.

(b) Australia

Other useful WTO documents, such as for example those with "job numbers" and papers from the Committee on Agriculture's Analysis and Information Exchange Process were currently outside the scope of the procedures. Arrangements could be made to enable appropriate circulation of these documents as well.

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<sup>1</sup> In the course of the review of the DSU a number of proposals which have a bearing on the subject of derestriction and circulation were made. They are reflected in the Compilation of comments submitted by Members prepared by the Secretariat (Job No. 6289). The relevant texts are reproduced on the following page.

Texts referred to in footnote 1 on Page 5

(a) EC: "As of today, when the panel and Appellate Body reports are issued to the WTO Membership, they are also made available to the general public. One possibility might be to make public at that stage not only the reports, but also the documents in the file before the panel or the Appellate Body (e.g. analysis and background notes prepared by the WTO Secretariat, submissions of participating parties which the parties had cleared for publication or non-confidential summaries, thereof, etc.). This suggestion might permit a significant shortening of the reports, by eliminating or substantially shortening the arguments section. In developing the precise modalities, the availability in all three official WTO languages of the documents necessary to fully understand individual cases should be ensured. (Paragraph 159 of the Compilation)".

(b) Japan: "With a view to encouraging the parties to the dispute to provide a non-confidential summary of the information contained in their submissions (i.e., a public version of the submission) and to improving transparency of the dispute settlement process, a deadline of providing public versions requested by any Members should be set out in the DSU. In this regard, the timing of derestricting final panel reports should be also considered. (Paragraph 174 of the Compilation)".

(c) Norway: "Early derestriction of the parties' submissions - or the non-confidential parts thereof, at the latest at the same time as the derestriction of the panel report itself, may promote a better understanding in the public of the dispute settlement system of the WTO. This may alleviate the need for extensive inclusion of the submissions in the panel reports themselves, which should be guided by the usually short summaries of arguments given in judgements of national courts. (Paragraph 166 of the Compilation)".

(d) The Compilation of comments submitted by Members also contains in paragraph 170 and the footnote 22 thereto a cross-reference to the proposal by the US and Canada which appears in item 3(d) of this note

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