

WORLD TRADE ORGANIZATION

RESTRICTED

GPA/W/33

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(97-0031)

Committee on Government Procurement

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CIRCULATION AND DERESTRICTION OF DOCUMENTS

Note by the Secretariat

1. At its meeting of 20 September 1996, the Committee agreed to align its procedures on the circulation and derestriction of documents with those adopted by the General Council for the WTO on 18 July 1996 and contained in document WT/L/160/Rev.1. As requested by the Committee, a draft decision to that effect, attached herewith, has been prepared by the Secretariat (GPA/M/3, paragraph 41).
2. The elements of the draft decision follow closely the WTO procedures except where:
 - the procedures for circulation of GPA documents to WTO Members which are not GPA Parties are set out in paragraph 1;
 - the references to the WTO bodies are replaced by the Committee on Government Procurement;
 - procedures for specific WTO bodies, e.g. Trade Policy Review Body and documents relating to balance-of-payments consultations and GATT Article XXVIII procedures in WT/L/160/Rev.1, Appendix items (a)-(d) and (f) are omitted.
3. The draft decision has been formulated on the basis that GPA documents would normally be made available to all WTO Members. This is consistent with the advice received from members of the Committee in response to the Secretariat's informal communication of 10 October 1996 concerning the availability of GPA documents to all WTO Members through the Documents Dissemination Facility via the Internet.
4. The attached draft decision is intended to replace the Decisions on interim procedures, dated 27 February 1996, on the circulation and derestriction of documents contained in GPA/1, Annexes 4 and 5 respectively.

PROCEDURES FOR THE CIRCULATION AND DERESTRICTION OF DOCUMENTS OF
THE COMMITTEE ON GOVERNMENT PROCUREMENT (1994)¹

[Draft] Decision of²

The Committee on Government Procurement *decides* to adopt the following procedures with respect to the circulation³ and derestriction of documents:

1. Formal documents shall be circulated to members of the Committee, to observers and to other Members of the WTO. In certain cases, the circulation of sensitive documents shall be determined on an *ad hoc* basis. The formal documents shall also be made available to Members of the WTO through the WTO Document Dissemination Facility via the Internet.
2. Documents circulated after the entry into force of the Agreement on Government Procurement in any GPA/- document series shall be circulated as unrestricted with the exception of documents specified in the attached Appendix, which shall be circulated as restricted and subject to derestriction, or consideration thereof, as provided. Notwithstanding the exceptions specified in the Appendix, any document that contains only information that is publicly available or information that is required to be published under the Agreement on Government Procurement shall be circulated on an unrestricted basis.
3. Notwithstanding the exceptions to paragraph 2 set forth in the Appendix,
 - (a) any Party may, at the time it submits any document for circulation, indicate to the Secretariat that the document be issued as unrestricted, and
 - (b) any restricted document circulated after the date of entry into force of the Agreement may be considered for derestriction at any time by the Committee or may be considered for derestriction at the request of any Party.
4. Requests for consideration for derestriction shall be made in writing and shall be directed to the Chairman of the Committee. Such requests shall be circulated to all Parties and placed on the agenda of a forthcoming meeting of the Committee for consideration. However, in order to preserve the efficiency of the work of the Committee, the Party concerned may indicate to the Secretariat that it circulate to Parties a notice advising them of the documents proposed for derestriction and the date proposed for derestriction, which shall normally be sixty days after the date the notice is circulated. These documents shall be derestricted on the date set forth in the notice unless, prior to that date, a Party notifies the Secretariat in writing of its objection to the derestriction of a document, or any portion of a document.

¹The decision does not cover documents outside of a formal document series, such as a submission to a dispute settlement panel, or an interim report of a dispute settlement panel submitted to the parties thereto.

²In adopting these procedures, the Committee took note that Parties attached particular importance to the restricted nature of documents so designated, and that individual governments should proceed accordingly in their handling of such documents.

³The terms "circulation" and "circulated" when used in this decision shall be understood to refer to the distribution by the Secretariat of documents to all Parties to the Agreement and to other WTO Members.

5. The Secretariat shall prepare and circulate a list of documents eligible for consideration for derestriction, indicating the proposed date of derestriction, which shall normally be sixty days after the circulation of the list. These documents shall be derestricted on the date set forth in the notice unless, prior to that date, a Party notifies the Secretariat in writing of its objection to the derestriction of a document, or any portion of a document.
6. If a document⁴ considered for derestriction is not derestricted because of an objection by any Party, and remains restricted at the end of the first year following the year in which an objection was raised, the document shall be considered for derestriction at that time.
7. The Secretariat will circulate periodically (e.g. every six months) a list of newly derestricted documents, as well as a list of all documents remaining restricted.
8. In the light of the experience gained from the operation of these procedures and changes in any other relevant procedures under the WTO, the Committee will review, and if necessary modify, the procedures two years after their adoption.

⁴These procedures shall apply *mutatis mutandis* to the consideration for derestriction of a portion of a document that remains restricted as a result of an objection made pursuant to paragraph 4.

APPENDIX

- (a) *Working documents in all GPA/- document series (i.e. draft documents such as agendas, decisions, proposals, applications for accession, Secretariat background notes as well as other working papers issued as "GPA/W/-" documents), including documents in the GPA/SPEC/- series.*

Such documents shall be derestricted upon the adoption of the report or of the decision pertaining to their subject matter, or considered for derestriction six months after the date of their circulation⁵, whichever is earlier. All background notes by the Secretariat, however, shall be considered for derestriction six months after the date of their circulation.

- (b) *Documents relating to rectifications or modifications of Appendices to the Agreement pursuant to Article XXIV: 6 of the Agreement.*

Such documents shall be derestricted upon completion of the Article XXIV:6 process through the certification of the changes.

- (c) *Minutes of meetings of the Committee and its subsidiary bodies.*

Such documents shall be considered for derestriction six months after the date of their circulation.

- (d) *Documents relating to working parties or other subsidiary bodies established by the Committee including working parties on accessions.*

Such documents shall be derestricted upon the adoption of the report of the working party. Prior to the adoption of the report, any such documents shall be considered for derestriction at the end of the first year following the year in which they were circulated.

- (e) *Documents submitted to the Secretariat by a Party for circulation if, at the time the Party submits the document, the Party indicates to the Secretariat that the document should be issued as restricted.*

Such documents shall be considered for derestriction at the end of each six-month period.⁶

⁵The "date of circulation" means the date printed on the front page of a document indicating when it has been made available to Parties' delegations.

⁶Documents circulated during the period January through June would be considered for derestriction directly after the end of that period. Documents circulated during the period July through December would be considered for derestriction directly after the end of that period.

- (f) *Reports of panels which are circulated in accordance with the provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes.*⁷

Such reports shall be circulated to all Parties to the Agreement on Government Procurement and other WTO Members as restricted documents and derestricted no later than the tenth day thereafter if, prior to the date of circulation, a party to the dispute that forms the basis of a report submits to the Chairman of the Dispute Settlement Body a written request for delayed derestriction. A report circulated as a restricted document shall indicate the date upon which it will be derestricted.⁸

⁷This provision will be subject to review at the time of review of the Dispute Settlement Understanding, and will be discontinued if there is no consensus on the matter.

⁸The following standard cover note will be placed on panel reports: "The report of the Panel on [name of dispute] is being circulated to all Parties to the Agreement on Government Procurement and other WTO Members, pursuant to the DSU. The report is being circulated as an unrestricted document from [date] pursuant to the procedures for the Circulation and Derestriction of Documents of the Committee on Government Procurement [document number]. Parties to the Agreement on Government Procurement are reminded that in accordance with the DSU only parties to the dispute may appeal a panel report, an appeal shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel, and that there shall be no *ex parte* communications with the panel or Appellate Body concerning matters under consideration by the panel or Appellate Body."