



Center for International Environmental Law (CIEL)

A HANDBOOK FOR OBTAINING DOCUMENTS FROM THE WORLD TRADE ORGANIZATION

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Introduction

International trade has such wide-ranging effects that everyone has an interest in it, whether they know it or not. Whether you care about the environment, safety and health, good governance, the products you buy, or the jobs you can get, international trade offers great benefits and opportunities, but it also presents risks and challenges. Understanding how international trade works and trying to make it work better for you and everyone else is a project that we should all take part in. The question is how.

The World Trade Organization, or WTO, is perhaps the most important organization in the world if you want to learn about international trade and try to influence how it functions. Its steadily growing membership includes all of the most advanced industrial countries in the world and several dozen other countries at various stages of economic development.

In the WTO, Members agree on rules to follow when trading with each other. We need to understand these rules and to make certain that they will cause international trade to serve the goals of sustainable development.

It is not easy for private citizens and organizations (NGOs) to follow what the WTO is doing or to influence what it will do. WTO Members are governments, and civil society has had limited opportunities to take part in the organization's activities. In July 1996, the WTO established a set of procedures for allowing the public to gain access to documents it uses and produces in the course of its work. Some of these are available to the public immediately. Most of the documents that are important to the development and application of trade rules, however, are first circulated only to the Membership. They are "restricted" and are officially not available to the public until they are "derestricted." Many types of documents can routinely stay restricted for months. In fact, they can remain restricted indefinitely if even a single Member does not want the public to be able to see them.

Having access to documents as they become available gives the public an opportunity both to discover the Members' views on international trade issues and to assess whether they have considered how particular trade rules may impact on related areas, such as the environment, safety, jobs, and so on. If this access is timely, non-governmental actors can try to influence international trade deliberations before the WTO makes decisions that are later difficult to challenge.

Access to WTO Documents

Automatically derestricted documents

Some kinds of documents are automatically derestricted if a specific event occurs, such as the completion of a report or the making of a final decision by a WTO body. The External Relations Division of the WTO Secretariat or a Member may be able to tell you when it thinks this will happen, but if derestriction depends upon the resolution of a particularly complicated or sensitive issue, the event may be delayed or never occur at all.

If the document is likely to be derestricted in one or two months, you probably cannot formally do anything to get it more quickly. If you are unsure of whether it will actually be automatically derestricted, you may want to ask for the help of a Member.

Documents that are not automatically derestricted

If the document you are trying to get is not derestricted automatically (either because it is not eligible for automatic derestriction or because the triggering event will not occur), it will not be derestricted until the Members consider whether it should be or not.

If the document you want is not automatically derestricted, find out when it is scheduled to be considered for derestriction by the Membership by contacting the External Relations Division or the Council Division of the WTO (see the list of WTO contacts on page 11).

If it will be considered within one or two weeks you probably will not be able to get it any more quickly by asking a Member for help.

In case of a long delay, you can ask a Member to request that a WTO body or the Membership of the WTO consider whether to derestrict the document earlier than it would otherwise be derestricted under the procedures. These methods are explained on page 6.

Special Derestriction Possibilities Available to Members

Derestriction consideration by a WTO body

On a Member's written request, the General Council, the Ministerial Conference, or the WTO body responsible for circulating the document will probably consider whether to derestrict a document at its next scheduled meeting.

Find out when the next meeting of either the General Council, the Ministerial Conference, or the WTO body responsible for circulating the document is scheduled to take place. If one of these bodies is scheduled to meet in two months or less, the Member that has agreed to help you probably should make a written request to the chairman of that body for the document to be considered for derestriction. (You may want to ask Members and NGOs that are familiar with the WTO, such as the International Center on Trade and Sustainable Development, for their advice on which body to approach.)

If none of these bodies is going to meet within approximately two months, or if they are unlikely to be able to consider whether to derestrict the document at a meeting that will occur that soon, you should probably ask the Member to use its second option, i.e. to request that the Membership consider the derestriction of the document.

Derestriction consideration by the WTO Membership

In this case, the Member informs the Secretariat, and the Secretariat notifies the Members that the document has been proposed for derestriction. The Members then have 60 days to consider whether the document should be derestricted. If at the end of the 60-day period no Member has objected to the derestriction, the document is derestricted.

NGO Recommendations

What Should the WTO do?

At present, virtually all of the documents that are important to the making and enforcing of WTO rules are generally not made available to the public until after the issues that they relate to have already been settled by the Members. This must change if the citizens of Member countries and NGOs are going to be able to affect the rules that are established and how these rules are applied.

Such public participation is critical because international trade rules affect so many areas besides trade, as discussed above. Those who care about these other areas and who know the most about them have a right to be involved and must be involved in the development of the rules. Public participation can prevent international trade from having negative effects on these other areas and ensure that it contributes to global sustainable development.

Restriction of documents must be limited and on a case-by-case basis

Sometimes, for example, to protect the international security of a Member country or proprietary interests, it may be necessary to restrict the circulation of a document for a period of time. This, however, must be determined on a case-by-case basis.

If a Member thinks a document should not be available to the public for a specified period, it should have to request that the Membership restrict the document for that period. All documents should be available to the public as soon as they are available to the Members unless a Member makes such a request, and the Membership agrees that the document should be restricted for a specified period of time on the basis of specific criteria, established by the WTO as justification for restricting access to documents.

Moreover, the goal should always be to provide the highest feasible level of transparency. Therefore, when restricting the content of a document, the Members should, whenever possible, redact (block out) information rather than restrict the entire document.

Finally, any decision to restrict a document, in whole or in part, should include an explanation of why the restriction is necessary.

What can individual citizens and organizations do?

Private citizens and NGOs can call upon national governments to insist on greater transparency at the WTO and to take full advantage of the limited opportunities provided by the new information policy.

For now, the WTO is directing NGOs to channel their input into international trade policy-making through their national representatives. In accepting this invitation, we can demonstrate to Member governments some of the flaws of the July Decision. For example, when providing advice on trade issues to national governments, we can highlight the fact that we are severely hindered by the lack of transparency at the WTO and tell Member governments how this reduces the richness of our input. After the inadequacies of the July Decision become apparent, we will be in a better position to insist on changes to the policy, as well as upon the most liberal possible implementation until such changes are made.

The July Decision of the General Council leaves ample room for the Committee on Trade and Environment and other bodies of the WTO to allow for greater input from civil society in their deliberations. Specifically, the Decision allows any WTO body to derestrict any of its documents. Consequently, WTO bodies can choose to derestrict their documents automatically. However, this process depends upon Member unanimity; any Member can

prevent derestriction of any document by objecting to its derestriction. Still, we can ask Member governments to routinely request the immediate derestriction of the documents of all WTO bodies. Repeated demands from Members could make faster derestriction more common.

When we approach Member governments to demand greater public participation in the setting of international trade policies, it may be useful to mention beneficial efforts of other countries to engage the public in the process of governing. We might also present basic information favoring public participation, adding that processes for direct public participation do not cost governments an excessive amount to implement, and in some cases may even save money; usually produce better public policies; often develop stronger community support for government policies and programs; and constitute a fundamental component of democratic good governance.

Anyone who is concerned and wants to participate in trade policy-making will need to know where and how to quickly get information to respond to specific concerns and questions. Such expertise can be built and shared through the ICTSD bibliography on public participation and the new series of ICTSD publications on Public Participation in the International Trading System, of which this document is a part. The ICTSD bibliography will be available in early 1997 as an on-line database on the internet. ICTSD will maintain and continue to update a reference file of existing research and writing on public participation throughout the world. A hard copy of this collection of information will be issued shortly. It, too, will be updated regularly. This bibliography will put at your fingertips critical information about public participation and will identify the world's experts on the subject.

The ultimate goal is to convince the WTO membership to establish a policy that explicitly provides citizens with the tools necessary to, at the very least, engage at the national level in the international trade policy-making process and hold their representatives accountable for the positions they take in the WTO. Timely availability of documents is essential for the public to be able to contribute effectively to the trade policy-making process. It is empty rhetoric to say that the WTO would like to see closer cooperation between NGOs and their governments at the national level if we cannot get access to relevant information in sufficient time to prepare thoughtful responses, suggestions and ideas.

We must convince the Members to increase public participation in the WTO. One important first step would be to follow the recommendations offered above for reform of the system for distributing documents to the public. We need to urge the Members to take this step now.

Contacts at the WTO

Note: All WTO phone/fax extensions begin with the prefix 739 (when calling internationally, dial 41-22 and then 739, followed by the extension).

To find out which documents have been derestricted;

To get lists of documents (1) proposed for derestriction, (2) that have been derestricted or (3) that have not been derestricted; or

To obtain a limited number of derestricted documents that cannot be found on the internet.

Contact: Alain Frank, Director, or Peter Pedersen of the External Relations Division at 5152 or

by fax at 5777.

To obtain large numbers of documents, for instance, all of the minutes available from a particular body*.

Contact: David Woods, Director of the Information Division, at 5015, or any of the following staff members of the Division:

Liliane Rastello, Senior Information Officer, 5186/5019

Luis V. Ople, Information Officer, "Focus" Editor, 5374

Nusrat Nazeer, Information/Press Officer, 5393

Hans-Peter Werner, Information/Press Officer, 5286

Eliane Falciola, 5019

Geneviève Guinchard, 5019

Tessa Bridgman, 5348

To find out when a document is scheduled to be considered for derestriction; or

To learn more about the derestriction process itself.

Contact: Paulo Barthel-Rosa, Director of the Council Division, at 5191, or Nadir Alikhan, Counsellor to the Division, at 5222, or either of them by fax at 5761.

* The relevant WTO bodies may prove a faster way of providing documents on a specific subject. Ask the Information Division for advice.

Endnotes

1. Annex 1 includes all WTO multilateral agreements on trade in goods, the General Agreement on Trade in Services, and the Agreement on Trade-Related Aspects of Intellectual Property Rights; Annex 2 is the Understanding on Rules and Procedures Governing Settlement of Disputes; and Annex 3 establishes the Trade Policy Review Mechanism.

2. WTO, Procedures for the Circulation and Derestriction of WTO Documents, WT/L/160/Rev.1 (July 22, 1996) (General Council Decision of July 18, 1996).

3. Id. at _ 2(a).

4. This provision is not clearly phrased. However, according to an unattributable source, a Member requested clarification of this language from the Chairman at the meeting of the General Council at which the Decision was adopted, and the interpretation of the Chairman was that these reports are to be immediately released if no party to the dispute objects. This can only delay their release for 10 days.

5. Although the language of these provisions is ambiguous, it is the practice of the Secretariat to derestrict documents of this type upon the occurrence of the automatic derestriction triggering events, even if a Member has objected to their derestriction during the prior derestriction consideration provided for in the Decision.

6. Id.