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AUSTRALIA – ANTI-DUMPING MEASURES ON A4 COPY PAPER

COMMUNICATION FROM THE PANEL

The following communication, dated 12 October 2018, was received from the Chairperson of the Panel with the request that it be circulated to the Dispute Settlement Body.

Paragraph 1(3) of the Working Procedures for the Panel proceedings in the dispute *Australia – Anti-Dumping Measures on A4 Copy Paper* provides:

These Working Procedures and the timetable will be made available to all WTO Members during the course of the dispute by being added to the DS document series for the dispute. The Panel will circulate preliminary rulings as appropriate.

Accordingly, please find enclosed the Additional Working Procedures of the Panel Concerning Business Confidential Information adopted by the Panel on 5 October 2018.

I would be grateful if you would circulate this document to the DSB.

**ADDITIONAL WORKING PROCEDURES OF THE PANEL
CONCERNING BUSINESS CONFIDENTIAL INFORMATION**

Adopted on 5 October 2018

The following procedures apply to any business confidential information (BCI) submitted in the course of the Panel proceedings in DS529.

1. For the purposes of these Panel proceedings, and subject to paragraphs 8 and 9, BCI includes:
 - a. any information designated as such by the party submitting it that was previously treated as confidential by the investigating authority in the anti-dumping investigation at issue in this dispute; and
 - b. any other information designated as such by the party submitting it.
2. If a party considers that certain BCI cannot be submitted without authorization from an entity that submitted that information during the investigation at issue, the party shall, at the earliest possible date, obtain an authorizing letter from the entity and provide such authorizing letter to the Panel, with a copy to the other party. The authorizing letter from the entity shall authorize both Indonesia and Australia to submit that BCI in this dispute.
3. Each party shall, at the request of the other party, facilitate the communication to an entity in its territory of any request to provide an authorization letter referred to in paragraph 2. Each party shall encourage any entity in its territory that is requested to grant the authorization referred to in paragraph 2 to grant such authorization. If an entity refuses to grant the authorization referred to in paragraph 2, a party may bring the situation to the attention of the Panel.
4. For the purposes of these Additional Working Procedures, "approved persons" means members of the Panel in the DS529 dispute proceedings, employees of the WTO Secretariat assigned to work on the DS529 dispute proceedings, translators and interpreters of the WTO, as well as representatives of, and outside advisors to, each of the parties to the dispute and third parties, which have been granted access to BCI pursuant to paragraph 7. A representative of, or an outside advisor to, a party or third party must not be designated as an approved person if that person is an officer or employee of an enterprise engaged in the production, sale, export, or import of A4 copy paper, or an officer or employee of an association of which the enterprise is a member.
5. Representatives of, and outside advisors to, each of the parties to the dispute and, where relevant under paragraph 7, representatives of, and outside advisors to, third parties shall be notified to the Panel, other party and third parties in a list containing the names, titles and employers of persons legitimately requiring access to the BCI in the DS529 dispute proceedings. The list for each party is to be first submitted at the latest by 8 October 2018. The list of a third party which has been granted access to BCI pursuant to paragraph 7 shall be submitted in accordance with that provision. The list of each party or third party shall be subsequently amended and re-submitted if the names and/or titles and/or employers are changed.
6. Third parties' access to BCI shall be subject to the terms of these Additional Working Procedures. Where third parties receive written submissions pursuant to the Working Procedures, the third parties shall receive the redacted versions of such written submissions containing BCI and redacted versions of exhibits thereto. The redacted versions of the parties' written submissions received by third parties pursuant to the Working Procedures and redacted versions of exhibits shall be sufficient to convey a reasonable understanding of the nature of the information at issue.
7. A third party may request access to the non-redacted version of a party's written submission received by a third party pursuant to the Working Procedures or an exhibit thereto containing BCI for the purpose of participating effectively in the Panel proceedings. The Panel, after consulting the parties, shall decide whether to grant access to such BCI, taking into consideration the sensitivity of the information and the need for the third party to see the information in order to ensure that their interests as a third party are fully taken into account. Where the Panel grants a third party's request, the third party shall submit a statement whereby it undertakes to respect

these Additional Working Procedures and shall provide the list of representatives of, and outside advisors to, the third party which the third party wishes to be designated as "approved persons" within the meaning of paragraph 4. If granted, the third party's access to the BCI will take place through the Digital Dispute Settlement Registry, unless good cause is shown for an alternative arrangement.

8. Any information that is available in the public domain may not be designated as BCI.
9. If a party considers that information submitted by the other party or third party should have been designated as BCI and objects to its submission without such designation, it shall forthwith bring this objection to the attention of the Panel and the other party or third party, together with the reasons for the objection. Similarly, if a party or third party considers that the other party or third party has designated information as BCI which should not be so designated, it shall forthwith bring this objection to the attention of the Panel and the other party or third party, together with the reasons for the objection. The Panel, in deciding whether information subject to an objection should be treated as BCI for the purposes of these Panel proceedings, will consider whether disclosure of the information in question could cause harm to the interests of the party submitting it or to the originator(s) of the information.
10. Only an approved person shall have access to BCI. Third parties shall only receive redacted versions of any documents to which they are permitted access under the Working Procedures of the Panel, unless granted access to BCI under the terms of paragraph 7.
11. An approved person shall not disclose BCI to persons other than other approved persons.
12. Each party, each third party having access to the BCI under the terms of paragraph 7, and each approved person shall only use BCI for the purposes of this dispute.
13. Each party and third party having access to the BCI under the terms of paragraph 7 is responsible for ensuring that its representatives and outside advisors comply with these Additional Working Procedures.
14. The party or third party submitting BCI shall mark the cover and/or first page of the document containing BCI, and each page of the document, to indicate the presence of such information. The specific information in question shall be placed between double brackets, as follows: [[xxxxxxx]]. The first page or cover of the document shall state "Contains Business Confidential Information", and each page of the document shall contain the notice "Contains Business Confidential Information" at the top of the page.
15. Any BCI that is submitted in binary-encoded form shall be clearly marked with the statement "Business Confidential Information" on a label of the storage medium, and clearly marked with the statement "Business Confidential Information" in the binary-encoded files.
16. In the case of an oral statement, or oral response to a question, containing BCI, the party or third party making such a statement or response shall inform the Panel before making it that the statement or response will contain BCI, and the Panel will ensure that only approved persons are able to hear that statement or response. The written versions of such oral statements or responses submitted to the Panel shall be marked as provided for in paragraph 14.
17. Each approved person shall store all documents containing BCI in such a manner as to prevent access to them by persons who are not approved persons.
18. The Panel will not disclose BCI, in its report or in any other way, to persons who are not approved persons. The Panel may, however, make statements of conclusion drawn from such information. Before the Panel circulates its final report to the Members, the Panel will give each party an opportunity to review the report to ensure that it does not contain any information that the party has designated as BCI.

19. At the conclusion of the dispute,¹ and within a period to be fixed by the Panel, each party and third party having access to BCI under these Additional Working Procedures shall return all original documents (including electronic material) containing BCI, to the party that submitted such BCI, certify in writing to the Panel and the other party that any and all copies of such documents have been destroyed, or otherwise protect the BCI against disclosure, consistent with the party's obligations under its domestic laws. The WTO Secretariat shall have the right to retain one copy of each of the documents containing BCI for the archives of the WTO.
20. Submissions containing BCI will be included in the record forwarded to the Appellate Body in the event of an appeal of the Panel's Report.
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¹ This is defined as when (a) the Panel or Appellate Body report is adopted by the DSB, or the DSB decides by consensus not to adopt the Panel or the Appellate Body report; (b) the authority for the establishment of the Panel lapses under Article 12.12 of the DSU; or (c) a mutually satisfactory solution is notified to the DSB under Article 3.6 of the DSU.