



17 June 2019

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## CANADA – MEASURES GOVERNING THE SALE OF WINE

### COMMUNICATION FROM THE PANEL

The following communication, dated 12 June 2019, was received from the Chairperson of the Panel with the request that it be circulated to the Dispute Settlement Body.

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Paragraph 2(5) of the Working Procedures for the Panel proceedings in the dispute *Canada – Measures Governing the Sale of Wine (DS537)* provides:

The Panel shall circulate its Working Procedures and timetable, and any amendments thereto, to WTO Members through the DS document series for this dispute.

Accordingly, please find enclosed the additional Working Procedures on business confidential information adopted by the Panel today.

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

ADDITIONAL WORKING PROCEDURES FOR THE PANEL CONCERNING BUSINESS CONFIDENTIAL  
INFORMATION (BCI)

**Adopted on 12 June 2019**

1. These procedures, adopted pursuant to paragraph 2(4) of the Panel's working procedures, are additional to the general protection of confidential information set forth in paragraph 2(1) of the Panel's working procedures. These procedures apply to business confidential information (BCI) submitted in the course of the present Panel proceedings.
2. For the purposes of these proceedings, BCI is defined as any information that has been designated as such by a party or a third party submitting the information to the Panel. The parties or third parties shall only designate as BCI information that is not available in the public domain, the release of which could cause serious harm to the interests of the originator(s) of the information. In addition, these procedures cease to apply to any BCI if the entity that provided the information makes the information publicly available or agrees in writing to make the information publicly available.
3. No person may have access to BCI except a member of the WTO Secretariat assigned to work on DS537 dispute proceedings or the Panel in the DS537 dispute proceedings, an employee of a party or third party, or an outside advisor to a party or third party for the purposes of this dispute. However, an outside advisor to a party or third party is not permitted access to BCI if that advisor is an officer or employee of an enterprise engaged in the production, sale, export, or import of products that are the subject of this dispute, or an officer or employee of an association of such enterprises.
4. A person having access to BCI shall treat it as confidential, i.e. shall not disclose that information other than to persons authorized to have access to it pursuant to these procedures. Each party and third party is responsible for ensuring that its employees and/or outside advisors comply with these procedures. BCI obtained under these procedures may be used only for the purpose of providing information and argumentation in this dispute and for no other purpose. All documents and electronic storage media containing BCI shall be stored in such a manner as to prevent unauthorized access to such information. Third parties' access to BCI shall be subject to the terms of these procedures.
5. A 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: [[xx,xxx.xx]]. The first page or cover of the document shall state "Contains Business Confidential Information on pages xxxxxx", and each page of the document shall contain the notice "Contains Business Confidential Information" at the top of the page. A party submitting BCI in the form of, or as part of, an Exhibit shall, in addition to the above, so indicate by putting "BCI" next to the exhibit number (e.g. Exhibit CAN-1 (BCI)).
6. Where BCI is submitted in electronic format, the file name shall include the terms "Business Confidential Information" or "BCI". In addition, where applicable, the label of the storage medium shall be clearly marked with the statement "Business Confidential Information" or "BCI".
7. Where a party submits a document containing BCI to the Panel, the other party or third party referring to that BCI in its documents, including written submissions and oral statements, shall clearly identify all such information in those documents. All such documents shall be marked and treated as described in paragraph 5 and, where applicable, paragraph 6. In the case of an oral statement containing BCI, or an oral response to a question, the party or third party making such a statement or response shall inform the Panel before making it that the statement will contain BCI, and the Panel will ensure that only persons authorized to have access to BCI pursuant to these procedures are present or observing the session at that time. The written versions of such oral statements submitted to the Panel shall be marked as provided for in paragraph 5 and, where applicable, paragraph 6.

8. If a party or third party considers that information submitted by the other party or a 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, and, where relevant, the third parties, in writing, together with the reasons for the objection, except where the information is submitted during a hearing, in which case the objection may be made verbally. Similarly, if a party or third party considers that the other party or a third party designated as BCI information which should not be so designated, it shall forthwith bring this objection to the attention of the Panel and the other party, and, where relevant, the third parties, in writing, together with the reasons for the objection, except where the information is submitted during a hearing, in which case the objection may be made verbally. The Panel shall decide whether information subject to an objection will be treated as BCI for the purposes of these proceedings, as appropriate, in accordance with the criteria set out in paragraph 2. The information subject to an objection shall be treated as BCI in accordance with these procedures until the Panel makes its decision.

9. The Panel will not disclose BCI, in its report or in any other way, to persons not authorized under these procedures to have access to BCI. The Panel may, however, make statements of conclusion drawn from such information, and redact, as necessary, additional information in the public version of the report in order to prevent indirect disclosure of information identified as BCI by the parties. 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 BCI.

10. Submissions, exhibits, and other documents or recordings containing BCI will be included in the record forwarded to the Appellate Body in the event of an appeal of the Report of the Panel.

11. If (a) pursuant to Article 16.4 of the DSU, the Panel report is adopted by the DSB, or the DSB decides by consensus not to adopt the Panel report, (b) pursuant to Article 12.12 of the DSU, the authority for establishment of the Panel lapses, or (c) pursuant to Article 3.6 of the DSU, a mutually satisfactory solution is notified to the DSB before the Panel completes its task, within a period to be fixed by the Panel, each party and third party shall return all documents (including electronic material and photocopies) containing BCI to the party that designated such information as BCI, or certify in writing to the Panel and the other party (or the parties, in the case of a third party returning such documents) that all such documents (including electronic material and photocopies) have been destroyed. The Panel and the WTO Secretariat shall likewise return all such documents or certify to the parties that all such documents have been destroyed. The WTO Secretariat shall, however, retain one copy of each of the documents containing BCI for the archives of the WTO.

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