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CANADA – MEASURES CONCERNING TRADE IN COMMERCIAL AIRCRAFT

COMMUNICATION FROM THE PANEL

Addendum

The following communication, dated 5 February 2019, was received from the Chairperson of the Panel with the request that it be circulated to the Dispute Settlement Body.

Paragraph 2(5) of the Working Procedures for the Panel proceedings in the dispute *Canada – Measures Concerning Trade in Commercial Aircraft* 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.

The Panel originally adopted additional Working Procedures for the protection of business confidential information and highly sensitive business information on 27 July 2018. The document was circulated to the DSB on 3 October 2018 (WT/DS522/16).

On 18 October 2018, the parties submitted a joint request to increase from 10 to 13 the maximum number of HSBI outside advisors indicated in paragraph 31 of the additional Working Procedures. The Panel accepted the request and amended its additional Working Procedures accordingly.

Based on the foregoing, please find enclosed a document containing the revised version of the additional Working Procedures as adopted by the Panel on 19 October 2018.

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

**PROCEDURES FOR THE PROTECTION OF BUSINESS CONFIDENTIAL INFORMATION AND
HIGHLY SENSITIVE BUSINESS INFORMATION**

Adopted on 19 October 2018

I. General

The following procedures apply to all business confidential information ("BCI") and highly sensitive business information ("HSBI") on the Panel record, including BCI and HSBI submitted during the information-gathering process under Annex V of the SCM Agreement and transmitted by the Facilitator as part of his report to the Panel. These procedures do not diminish the rights and obligations of the parties to request and disclose any information within the scope of the SCM Agreement and Article 13 of the DSU.

II. Definitions

1. **"Approved Persons"** means Representatives or Outside Advisors of a Party, when designated in accordance with Section IV of these procedures.

2. **"Business Confidential Information"** or **"BCI"** means any business information that a Party or a Third-Party "Designated as BCI" regardless of whether contained in a document provided by a public or private body because it is not otherwise available in the public domain. Each Party and Third-Party shall act in good faith and exercise restraint in designating information as BCI, and will endeavor to designate information as BCI only if its disclosure would cause harm to the originators of the information.

3. **"Conclusion of the Panel Process"** means the earliest to occur of the following events:

- (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 report;
- (b) a Party formally notifies the DSB of its decision to appeal pursuant to Article 16.4 of the DSU;
- (c) pursuant to Article 12.12 of the DSU, the authority for establishment of the Panel lapses; or
- (d) pursuant to Article 3.6 of the DSU, a mutually satisfactory solution is notified to the DSB.

4. **"Designated as BCI"** means:

- (a) for printed information, text that is set off with bold square brackets in a document clearly marked with the notation "BUSINESS CONFIDENTIAL INFORMATION" and with the name of the Party or Third Party that submitted the information;
- (b) for electronic information, characters that are set off with bolded square brackets (or with a heading with bolded square brackets on each page) in an electronic file that contains the notation "BUSINESS CONFIDENTIAL INFORMATION", has a file name that contains the letters "BCI", and is stored on a storage medium with a label marked 'BUSINESS CONFIDENTIAL INFORMATION' and indicating the name of the Party or Third Party that submitted the information;
- (c) for uttered information, declared by the speaker to be "Business Confidential Information" prior to utterance¹; and
- (d) in case either Party objects to the designation of information as BCI under subparagraphs 4(a) - (c), the dispute shall be resolved by the Panel. If the Panel disagrees with designation of information as BCI, the submitting Party or Third Party may either designate it as non-BCI or withdraw the information. The Panel shall either destroy such information or return it to the

¹ The erroneous failure by a speaker to make such a prior declaration shall not affect the designation of the BCI in question.

submitting Party or Third Party. Each Party or Third Party may at any time designate as non-BCI information previously designated by that Party or Third Party as BCI.

This paragraph shall apply to all submissions, including exhibits, by a Party or Third Party.

5. **"Designated as HSBI"** means:

(a) for printed information, text that is set off with double bolded square brackets (or a heading with double bolded square brackets on each page) in a document clearly marked with the notation "HIGHLY SENSITIVE BUSINESS INFORMATION" and with the name of the Party or Third Party that submitted the information;

(b) for electronic information, in characters that are set off with double bolded square brackets (or a heading with double bolded square brackets on each page) in an electronic file that contains the notation "HIGHLY SENSITIVE BUSINESS INFORMATION", has a file name that contains the letters "HSBI", and is stored on a storage medium with a label marked "HIGHLY SENSITIVE BUSINESS INFORMATION" and indicating the name of the Party or Third Party that submitted the information; and

(c) for uttered information, declared by the speaker to be "Highly Sensitive Business Information" prior to utterance.²

This paragraph shall apply to all submissions, including exhibits, by a Party or Third Party.

6. **"Electronic information"** means any information stored in an electronic form (including but not limited to binary-encoded information).

7. **"Highly Sensitive Business Information" or "HSBI"** means any business information regardless of whether contained in a document provided by a public or private body that a Party or Third-Party has "Designated as HSBI" because it is not otherwise available in the public domain and its disclosure could, in the Party's or Third-Party's view, cause exceptional harm to its originators. Each Party and Third-Party shall act in good faith and exercise the utmost restraint in designating information as HSBI. Each Party and Third-Party may at any time designate as non-BCI/HSBI or as BCI information designated by that Party or Third-Party as HSBI.

(a) The following categories of information may be Designated as HSBI:

(i) information indicating the actual selling or offered price of any commercial aircraft manufacturer's products or services³, and, except as provided in subparagraph 7(d)(i) below, any graphs or other use of the data which reflect the movement of prices, pricing trends or actual prices of a commercial aircraft model or a family of commercial aircraft;

(ii) information gathered or produced in the context of commercial aircraft sales campaigns;

(iii) information concerning market forecasts, analyses, business plans and share/business valuations generated by commercial aircraft producers, consultants, investment banks or other banks, with regard to commercial aircraft products; or

(iv) information concerning a commercial aircraft manufacturer's costs of production, including but not limited to data regarding pricing by suppliers.

² The erroneous failure by a speaker to make such a prior declaration shall not affect the designation of the HSBI in question.

³ This category includes (but is not limited to) information on individual commercial aircraft prices, prices per seat, or information allowing the operating cost per seat of a commercial aircraft to be determined, calculated or reflected; the negotiated or offered prices for the airframe; all concessions offered or agreed to by a commercial aircraft manufacturer including financing, spare parts, maintenance, pilot training, asset value and other guarantees, buy back options, remarketing arrangements or other forms of credit support. This category shall also include the actual pricing information relating to any number of individual commercial aircraft offers and prices (including concessions) aggregated by model or other category.

(b) Each Party and Third Party may also designate as HSBI other categories of business information that is not otherwise available in the public domain and the disclosure of which could, in the Party's view, cause exceptional harm to its originators.

(c) Each Party and Third Party shall designate as HSBI any information described in subparagraph 7(a) that pertains to commercial aircraft produced by a commercial aircraft manufacturer headquartered within the territorial jurisdiction of either of the Parties.

(d) The following categories of information shall not be Designated as HSBI:

(i) aggregated pricing data for a particular commercial aircraft model or family of commercial aircraft within a particular market that is indexed (i.e., does not reflect actual prices but rather movements in prices off a base of 100 for a particular year). Such data shall be treated as BCI;

(ii) general legal conclusions based on HSBI (e.g., that HSBI demonstrates that a producer engaged in price undercutting). Such conclusions shall be treated as neither BCI nor HSBI;

(iii) contracts on the granting of launch aid or reimbursable launch investment and project appraisal documents relating thereto, other than information described in subparagraph 7(a);

(iv) contracts for the provision of equity investments and project appraisal documents relating thereto, other than information described in subparagraph 7(a);

(v) the terms and conditions of loans, other than information described in subparagraph 7(a); and

(vi) intergovernmental agreements and government decisions, other than information described in subparagraph 7(a).

(e) Information shall not be designated as HSBI simply because it is subject to bank secrecy or banker-client confidentiality.

(f) In case either Party objects to the designation of information as HSBI under subparagraphs 7(a) - (e), the dispute shall be resolved by the Panel. If the Panel disagrees with designation of information as HSBI, the submitting Party or Third Party may either designate it as BCI, as non-BCI/HSBI or withdraw the information. The Panel shall either destroy such information or return it to the submitting Party or Third Party. Each Party or Third Party may at any time designate as non-BCI/HSBI or as BCI information previously designated by that Party or Third Party as HSBI.

8. **"HSBI Approved Persons"** means Approved Persons specifically designated by the Parties and WTO Approved Persons specifically designated by the Director of the Rules Division acting on behalf of the Director-General of the WTO, as having the right to access HSBI (according to the procedures laid down in Section IV), as well as the Panel members.

9. **"HSBI location"** means a room to be kept locked when not occupied and the access to which shall be possible only for HSBI Approved Persons, where appropriate security measures for the protection of information have been taken, including for the storage of information in a locked security container, located:

(a) for HSBI submitted by Brazil, on the premises of Borden Ladner Gervais, World Exchange Plaza, 100 Queen Street, Suite 1300 Ottawa, ON K1P 1J9 Canada, and King & Spalding 1700 Pennsylvania Avenue, NW Washington, DC 20006, United States of America;

(b) for HSBI submitted by Canada, on the premises of Canada's Embassy in Brasilia, Brazil and Canada's Embassy in Washington, D.C., United States of America;

(c) for HSBI submitted by a Third Party, on the premises of its Geneva Mission to the WTO;

(d) for HSBI submitted by Brazil, Canada or any Third Parties, on the premises of the WTO Secretariat (Centre William Rappard, Rue de Lausanne 154, Geneva, Switzerland).

Parties may at any time agree to a change in HSBI locations.

10. **"Outside Advisor"** means a legal counsel or other advisor of a Party or Third Party, who:

- (a) advises a Party in the course of the dispute;
- (b) is not an employee, officer or agent of an entity or an affiliate of an entity engaged in the manufacture of commercial aircraft, the provision of supplies to an entity engaged in the manufacture of commercial aircraft, or the supply of air transportation services; and
- (c) is subject to an enforceable code of professional conduct that includes an obligation to protect confidential information, or has been retained by another outside advisor who assumes responsibility for compliance with these procedures and is subject to such a code of professional conduct.

For purposes of this paragraph, outside legal counsel representing a commercial aircraft producer headquartered in the territory of one of the Parties in connection with these proceedings or outside consultants who have been retained by such counsel to provide advice with regard to these proceedings are not considered agents of an entity listed in subparagraph (b).

11. **"Panel"** means the DS522 Panel composed on 6 February 2018.

12. **"Party"** means Brazil or Canada.

13. **"Party-BCI"** means BCI originally submitted by a Party.

14. **"Representative"** means an employee of a Party or Third Party.

15. **"Sealed laptop computer"** means a laptop computer having (software and hardware) characteristics considered necessary by the submitting Party for protection of that HSBI, provided that it has software installed that permits such HSBI to be searched and printed in accordance with paragraph 50. However, HSBI may not be edited on the sealed laptop computer.

16. **"Secure site"** means a facility to be kept locked when not occupied and the access to which shall be possible only for Approved Persons, where appropriate security measures for the protection of information have been taken, including for the storage of information in a locked security container, located:

(a) in the case of the Secretariat, on the premises of the WTO (Centre William Rappard, Rue de Lausanne 154, Geneva, Switzerland);

(b) in the case of Brazil

- The Brazilian Delegation to the WTO and other Economic Organizations in Geneva, Avenue Louis-Casaï, 71, Cointrin (Geneva), Switzerland;

- The offices of the Divisão de Contenciosos Comerciais Palácio do Itamaraty, Annex II, Room 533, Esplanada dos Ministérios, Brasília, Brazil; and

- up to three additional sites specified in accordance with subparagraph (d);

(c) in the case of Canada

- The offices of the Trade Law Bureau (Lester B. Pearson Building, Tower C, 7th floor, 125 Sussex Drive, Ottawa, ON K1A 0G2, Canada);

- The Permanent Mission of Canada to the World Trade Organization, the United Nations and the Conference on Disarmament (5 Avenue de l'Ariana, 1202 Geneva, Switzerland); and

and up to three additional sites specified in accordance with subparagraph (d);

(d) up to three sites other than a government office that are designated by each Party for use by its Outside Advisors; provided that the identity of those sites has been submitted to the other Party and to the Panel and that the other Party has not objected to the designation of that site within ten days of such submission.

Any objections raised under subparagraph 16(d) may be resolved by the Panel.

17. **"Stand-alone computer"** means a computer that is not connected to a network.

18. **"Stand-alone printer"** means a printer that is not connected to a network.

19. **"Submission"** means any written, electronic, or uttered information transmitted to the Panel, including but not limited to, correspondence, written submissions, exhibits, oral statements, and answers to questions.

20. **"Third Party"** means a Member having notified its interest in the dispute to the DSB pursuant to DSU Article 10.

21. **"Third Party BCI Approved Person"** means a representative or Outside Advisor of a third party granted access to BCI pursuant to Section V of these procedures.

22. **"WTO Approved Persons"** means the Panel members, Permanent Group of Experts members or experts appointed by the Panel who in the opinion of the Panel require access to BCI, and persons employed or appointed by the Secretariat who have been authorized by the Secretariat, in accordance with Section IV of these procedures, to work on the dispute (including translators and interpreters as well as any transcribers present at Panel meetings involving BCI and/or HSBI). Such persons shall be designated in accordance with Section IV of these procedures.

23. **"WTO Reading Room"** means a room, located on the premises of the WTO, which a Third Party BCI Approved Person may use to access a Party's submission that contains Party-BCI.

24. **"WTO Rules of Conduct"** means the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes, as adopted by the DSB on 3 December 1996 (WT/DSB/RC/1).

III. Scope

25. These procedures apply to all BCI and HSBI received by an Approved Person and by a WTO approved person as a result of the Panel process and to all BCI reviewed, in accordance with these procedures, by a Third Party BCI Approved Person.

26. Unless specifically otherwise provided herein, these procedures do not apply to a Party's or Third Party's treatment of its own BCI and HSBI.

27. The Panel is aware that Canada may need to submit information pertaining to {insert classifications}, and/or information that it internally classifies as {insert classifications}. Similarly, Brazil may need to submit information that it internally classifies as {insert classifications}. The Panel will to the extent possible implement procedures for the protection of such classified information in the event that either Party informs the Secretariat that it will be submitting such classified information and has not already designated it as BCI or HSBI. In such cases, the submitting Party shall propose appropriate procedures for the protection of such classified information.

IV. Designation of Approved Persons

28. At the latest on the date to be established by the Panel, each Party shall submit to the other Party and Third Parties, and to the Panel, a list of the names and titles of its Representatives and Outside Advisors who need access to BCI submitted by the other Party and/or Third Party and whom it wishes to have designated as Approved Persons, along with any clerical or support staff that would have access to the BCI. On that list, each Party shall indicate which Approved Persons need access to HSBI submitted by the other Party and/or Third Parties and whom it wishes to have designated as HSBI Approved Persons.

29. No Representative shall be designated an Approved Person if such Representative is involved directly or indirectly in the oversight, management, operation, or other actions of an entity engaged in the manufacture of commercial aircraft, the provision of supplies to an entity engaged in the manufacture of commercial aircraft, or the supply of air transportation services.

30. There shall be no Third Party HSBI Approved Persons. The designation of Third Party BCI Approved Persons shall be governed by paragraphs 37 and 38.

31. Each Party shall keep the number of Approved Persons as limited as possible. Each Party may designate no more than a total of 15 Representatives and 13 Outside Advisors as "HSBI Approved Persons".

32. WTO Approved Persons shall have access to BCI. The Director of the Rules Division, acting on behalf of the Director-General of the WTO, shall submit to the Parties and Third Parties, and to the Panel, a list of WTO Approved Persons who shall have access to BCI and, additionally, who shall have access to HSBI.

33. Unless a Party objects to the designation of an Outside Advisor of the other Party, the Panel shall designate those persons as Approved Persons. A Party also may object within ten days of becoming aware of information that was not available to the Party at the time of the filing of a list under paragraph 28 that would suggest that designation of an individual is not appropriate. If a Party objects, the Panel shall decide on the objection within ten days. Any objection filed by a Party shall be communicated to the other Party on the same day that it is submitted to the Panel.

34. An objection may be based on the failure to satisfy the definition of "Outside Advisor" or on any other compelling basis, including conflicts of interest.

35. The Parties or the Director of the Rules Division, acting on behalf of the Director-General of the WTO, may submit amendments to their lists at any time, subject to the overall limits set out in paragraph 31 and to objections for the addition of new Approved Persons in accordance with paragraphs 33 and 34. Any amendment filed by a Party shall be communicated to the other Party and to Third Parties on the same day that it is submitted to the Panel.

V. BCI

36. Only Approved Persons, WTO Approved Persons and Third Party BCI Approved Persons may have access to BCI submitted in this proceeding. Third Party BCI Approved Persons may not have access to Party-BCI other than that included in the submissions. Approved Persons, WTO Approved Persons and Third Party BCI Approved Persons shall use BCI only for the purposes of this dispute. No Approved Person, WTO Approved Person or Third Party BCI Approved Person shall disclose BCI, or allow it to be disclosed, to any person except another Approved Person, WTO Approved Person or Third Party BCI Approved Person. These obligations apply indefinitely.

37. Each Third Party that wants to access Party-BCI contained in the first submission of a Party shall submit to the other Party and Third Parties, and to the Panel, a list of the names and titles of any Representatives and Outside Advisors (including clerical or support staff) who need access to such BCI and whom it wishes to have designated as Third Party BCI Approved Persons. Each Third Party shall keep the number of Third Party BCI Approved Persons as limited as possible. Each Third Party may designate no more than a total of 5 Representatives and Outside Advisors as Third Party BCI Approved Persons.

38. Unless a Party objects to the designation of an Outside Advisor of a Third Party, the Panel shall designate those persons as Third Party BCI Approved Persons. A Party also may object within ten days of becoming aware of information that was not available to the Party at the time of the filing of a list under paragraph 37 above that would suggest that designation of an individual is not appropriate. If a Party objects, the Panel shall decide on the objection within ten working days. An objection may be based on the failure to satisfy the definition of "Outside Advisor" or on any other compelling basis, including conflicts of interest.

39. A Party shall make no more than one copy of any BCI submitted by the other Party and any Third Party for each Secure site provided for that Party in paragraph 16.

40. BCI submitted pursuant to these procedures shall not be copied, distributed, or removed from the Secure site, except as necessary for submission to the Panel and as provided in Paragraph 46. Notwithstanding the above, documents containing BCI may be taken out of the Secure site only as necessary for the working sessions of the Panel and WTO Approved Persons, and only if such documents are stored on a Sealed laptop computer provided by the Party that submitted the information. The Sealed laptop computer shall remain on the premises of the WTO at all times and, while not locked in the Secure site, shall be in the direct custody of a WTO Approved Person, who shall ensure that no reproductions or photographs of information stored on the Sealed laptop are created. At the end of the relevant working session, the Sealed laptop shall be stored in the Secure site.

41. Parties may incorporate BCI in notes, internal memoranda or draft submissions for the exclusive use of Approved Persons. Any notes, memoranda or draft submissions and the BCI that they contain shall be marked in accordance with paragraph 4.

42. The treatment in a Party's submissions to the Panel of any BCI shall be governed by the provisions of this paragraph, which shall prevail to the extent of any conflict with the other provisions of the Working Procedures (including these Procedures) relating to BCI.

(a) Parties may incorporate BCI in submissions to the Panel, marked as indicated in paragraph 4. In exceptional cases, parties may include BCI in an appendix to a submission.

(b) A Party submitting a submission or appendix containing BCI shall also submit, within a time period to be set by the Panel, a version redacting any BCI. This shall be referred to as the "Non-BCI Version". However, a Party is not required to submit a "Non-BCI Version" of any exhibit containing BCI, unless specifically directed to do so by the Panel.

(c) A Non-BCI Version shall be sufficient to permit a reasonable understanding of its substance. In order to prepare such a Non-BCI Version:

(i) A Party may request the Party that originally submitted the BCI, as soon as possible, to indicate with precision portions of documents containing BCI that may be included in the non-BCI Version and, if necessary to permit a reasonable understanding of the substance of the information, produce a Non-BCI summary in sufficient detail to achieve this aim.

(ii) Upon receipt of such a request, the Party that originally submitted the BCI shall, as soon as possible, indicate with precision portions of documents containing BCI that may be included in the Non-BCI Version and, if necessary to permit a reasonable understanding of the substance of the information, produce a Non-BCI summary in sufficient detail to achieve this aim.

(iii) The Panel shall resolve any disagreement as to whether the Party that originally submitted the BCI failed to indicate with sufficient precision portions of documents containing BCI that may be included in the Non-BCI Version and to produce, if necessary, a Non-BCI summary in sufficient detail to permit a reasonable understanding of the substance of the information, and may take appropriate action to ensure that the provisions of this paragraph are satisfied.

43. Any document containing BCI shall not be copied in excess of the number of copies required by the Approved Persons. All copies of such documents shall be consecutively numbered. The making of electronic copies shall be avoided whenever possible. Such documents may be transmitted

electronically only by using secure e-mail or other means of secure electronic communication. If a Party or Third Party submits to the Panel an original document that cannot be transmitted electronically, it shall on the day of submission deliver a copy of that document to the first Secure site listed for the other Party in paragraph 16.

44. Notwithstanding the provision of the Working Procedures regarding the Service of Documents (paragraph 29), the following procedures apply to the access by Third Parties to a Party's submission that contains Party-BCI.

(a) Third Party BCI Approved Persons may view Party-BCI contained in a Party's first written submission only in a Secure site or in the WTO Reading Room. Third Party BCI Approved Persons may not bring into such room any electronic recording or transmitting devices. Third Party BCI Approved Persons may not remove a Party's Submission containing Party-BCI from such room, but may take handwritten notes of the Party-BCI contained therein. Such notes shall be used exclusively for this dispute (that is, DS522). Each person viewing a Party's Submission containing Party- BCI shall complete and sign a log identifying the submission the person reviewed. The Party responsible for maintaining the particular Secure site, and the WTO Secretariat in the case of the WTO Reading Room, shall maintain such log until one year after the Conclusion of the Panel Process. Before entering and when leaving the room, Outside Advisors who are Third Party BCI Approved Persons may be subject to appropriate controls.

(b) If a Third Party BCI Approved Person removes from the Secure site or the WTO Reading Room a handwritten memo in accordance with subparagraph 44(a) above, that Third Party BCI Approved Person shall store the memo only in a locked security container. Such memo shall be appropriately protected against improper inspection and eavesdropping when being consulted and will be transmitted in sealed heavy duty double envelopes only. The content of such memo shall not be incorporated, electronically or in handwritten form, into the Non-BCI Version, as defined in paragraph 42(b).

(c) All Third Parties that have designated Third Party BCI Approved Persons must inform the Panel and the Parties of the identity of the specific room (including the address and the room number) in which the locked security container, as referred to in subparagraph (b) above, is located.

(d) If a Third Party BCI Approved Person removes from the Secure site or the WTO Reading Room a handwritten memo in accordance with subparagraph 44(a) above, such memo shall not be copied in excess of the number of copies required by the Third Party BCI Approved Persons. All copies of such documents shall be consecutively numbered. The making of electronic copies of such memo shall be prohibited.

(e) A Third Party may not incorporate into the body of its submission any Party-BCI. If a Third Party wishes to refer to any Party-BCI, the relevant arguments including such BCI should be incorporated into a separate Appendix. Such Appendix shall not be serviced to other Third Parties.

(f) On the date determined by the Panel as the deadline to make the Third Party submission, a Third Party shall service its submission only to the Parties and to the Panel. The submission shall be serviced to the other Third Parties only after the Parties have confirmed that the submission does not contain or disclose Party-BCI. A Party shall make this confirmation or otherwise advise of any necessary change to the relevant Third Party within 5 working days of receiving the submissions of Third Parties.

45. A Party or Third Party that wishes to submit or refer to BCI at a Panel meeting shall so inform the Panel and the other Party, and Third Parties as appropriate. The Panel shall exclude persons who are not Approved Persons, WTO Approved Persons or, as appropriate, Third Party BCI Approved Persons from the meeting for the duration of the submission and discussion of BCI.

46. Approved Persons and WTO Approved Persons shall store BCI only in locked security containers or in computers or computer systems that prevent access to such documents by non-approved persons. In the case of BCI submitted to the Panel, such locked security containers shall be kept on the WTO Secretariat's premises, except that Panel Members may maintain a copy of all relevant documents and materials containing BCI at their places of residence, if such BCI documents and materials are stored on an encrypted USB key to be provided by the Party submitting such documents and materials. Such documents and materials shall be stored in locked security

containers when not in use. BCI shall be appropriately protected against improper inspection and eavesdropping when being consulted and will be transmitted in sealed heavy duty double envelopes only. All work papers (e.g., notes, memoranda, draft submissions, worksheets, etc.) containing BCI shall, when no longer needed, be shredded or burned consistent with normal government practice for destroying sensitive documents.

47. Each Party or Third Party may at any time withdraw access to any BCI submitted. In this case, the Panel, the other Party and Third Parties shall destroy or return all documents (including electronic material) containing such BCI to the Party or Third Party that submitted such documents.

48. The Panel shall not disclose BCI in its report, but may make statements or draw conclusions that are based on the information drawn from the BCI.

VI. HSBI

49. Unless otherwise provided below, HSBI shall be subject to all the restrictions in Section V applicable to BCI.

50. HSBI shall be submitted to the Panel in electronic form, using encrypted USB keys or two Sealed laptop computers connectable to 19" - 21" monitors, or in hard copy form, for access by WTO Approved Persons designated pursuant to paragraphs 8 and 22 as being additionally authorized to access HSBI. All such HSBI shall be stored in a combination safe at the HSBI location referred to in paragraph 9(d). Any computer in that room shall be a Stand-alone computer. A Stand-alone printer may be used to make hard copies of any HSBI. Such hard copies shall be made on distinctively colored paper and marked in accordance with paragraph 5. Such hard copies shall be stored in a combination safe at the HSBI location referred to in paragraph 9(d). Documents containing HSBI as well as printed copies of any HSBI shall not be removed from this designated secure location, except that documents containing HSBI may be so removed if stored on a Sealed laptop computer provided by the Party that submitted the information (i) to the extent necessary for the working sessions of the Panel and WTO Approved Persons designated as HSBI Approved Persons; and (ii) subject to appropriate precautions, for purposes of meetings of the Panel with the Parties and any internal deliberations of the Panel, as provided for in paragraph 60(j). Outside of any relevant working session, meeting of the Panel with the Parties, or internal deliberation of the Panel, the Sealed laptop shall be stored in a combination safe at the HSBI location referred to in paragraph 9(d). The Sealed laptop computer shall remain on the premises of the WTO at all times and, while not locked in the Secure site, shall be in the direct custody of a WTO Approved Person designated as an HSBI Approved Person, who shall ensure that no reproductions or photographs of information stored on the Sealed laptop are created.

51. Each Party shall maintain an additional copy (electronic or hard) of the HSBI it submits to the WTO, for access by HSBI Approved Persons acting on behalf of the other Party, in the relevant HSBI locations listed in paragraph 9. A Stand-alone printer may be used to make hard copies of any HSBI. Such hard copies shall be made on distinctively colored paper. Such hard copies shall either be stored in a safe at the relevant HSBI location, or destroyed at the end of the relevant working session.

52. If a Third Party submits HSBI, it shall notify the Parties of the fact that such submission has been made. Each Third Party submitting HSBI shall maintain an additional copy (electronic or hard) of the HSBI it submits to the WTO, for access by HSBI Approved Persons acting on behalf of the Parties, in the HSBI locations listed in paragraph 9. A Stand-alone printer may be used to make hard copies of any HSBI. Such hard copies shall be made on distinctively colored paper. Such hard copies shall either be stored in a safe at the relevant HSBI location, or destroyed at the end of the relevant working session.

53. Except as otherwise provided in these procedures, HSBI shall not be stored, transmitted or copied either in written or electronic form.

54. HSBI Approved Persons may view HSBI on the Sealed laptop computer maintained by the other Party or a Third Party or, in the case of HSBI submitted on encrypted USB keys on a Stand-alone computer, only in a designated room at one of the HSBI locations indicated in paragraph 9, unless otherwise mutually agreed by the Parties. Each Party and Third Party shall make the

designated room available to HSBI Approved Persons from 9:00 a.m. to 5:00 p.m. (local time) during official working days at the respective HSBI location. The HSBI location referred to in paragraph 9(d) shall be available to HSBI Approved Persons by prior arrangement with the WTO Secretariat. HSBI Approved Persons may not bring into such room any electronic recording or transmitting devices. HSBI Approved Persons may not remove HSBI from such room, except in the form of handwritten notes or aggregated information generated on a Stand-alone computer. In either case, such notes or information shall be used exclusively for this dispute in connection with which the HSBI has been submitted. Each person viewing the HSBI in the HSBI location shall complete and sign a log identifying the HSBI that the person reviewed or, alternatively, such a log can be generated automatically. The WTO Secretariat shall, for the HSBI location referred to in paragraph 9(d), maintain such log until one year after the Conclusion of the Panel Process. Each Party shall, for the HSBI location within its territory referenced in paragraph 9, maintain such log until one year after the Conclusion of the Panel Process. The WTO Secretariat shall, for the HSBI location referred to in paragraph 9(d), maintain such log until one year after the Conclusion of the Panel Process. Before entering and when leaving such room, Outside Advisors who are HSBI Approved Persons may be subject to appropriate controls.

55. No HSBI Approved Person or WTO Approved Persons designated pursuant to paragraphs 8, 22 and 28 as being additionally authorized to access HSBI shall disclose HSBI to any person except another HSBI Approved Person or WTO Approved Persons designated pursuant to paragraphs 8, 22 and 28 as being additionally authorized to access HSBI, and then only for the purpose of this dispute. This obligation applies indefinitely.

56. HSBI may be processed only on Stand-alone computers. Any memorandum or appendix to a submission containing HSBI shall not be transmitted electronically, whether by e-mail, facsimile, or otherwise. This provision shall not prevent the use of encrypted USB keys or similarly protected devices for the transfer of such documents.

57. All HSBI shall be stored in a safe at the relevant HSBI location in accordance with paragraphs 9 and 50.

58. A Party or Third Party that wishes to submit or refer to HSBI at a Panel meeting shall so inform the Panel prior to doing so. The Panel shall exclude persons who are not HSBI Approved Persons or WTO Approved Persons designated pursuant to paragraphs 8, 22 and 28 as being additionally authorized to access HSBI from the meeting for the duration of the submission and discussion of the HSBI.

59. Each Party or Third Party may at any time terminate access to any HSBI submitted. In this case, the Panel, the other Party and Third Parties shall destroy or return all documents (including electronic material) containing such HSBI to the Party or Third Party that submitted such documents.

60. The treatment in a Party's submissions to the Panel of any HSBI shall be governed by the provisions of this paragraph, which shall prevail to the extent of any conflict with the other provisions of the Working Procedures (including these Procedures) relating to HSBI.

(a) HSBI may be incorporated into a separate appendix to, but not the body of, a Party's submission, which appendix shall be comprehensible in itself. The document containing the HSBI shall be referred to as the "Full HSBI Version Appendix". HSBI submitted by a Party or Third Party may also be incorporated into exhibits, including expert reports, in accordance with the provisions of paragraph 5 of these Procedures";

(b) A Party submitting an appendix containing HSBI shall also submit, within a time period to be set by the Panel, a version redacting any HSBI. This shall be referred to as the "Redacted Version Appendix";

(c) At the request of a Party, information contained in the Redacted Version Appendix may be treated as BCI, in accordance with the provisions of Section V;

(d) A Redacted Version Appendix shall be sufficient to permit a reasonable understanding of its substance. In order to prepare such a Redacted Version Appendix:

- (i) A Party may request that the Party that originally submitted the HSBI, as soon as possible, indicate with precision portions of documents containing HSBI that may be included in the Redacted Version Appendix and, if necessary to permit a reasonable understanding of the substance of the information, produce a non-HSBI summary in sufficient detail to achieve this aim.
- (ii) Upon receipt of such a request, the Party that originally submitted the HSBI shall, as soon as possible, indicate with precision portions of documents containing HSBI that may be included in the Redacted Version Appendix and, if necessary to permit a reasonable understanding of the substance of the information, produce a non-HSBI summary in sufficient detail to achieve this aim.
- (iii) The Panel shall resolve any disagreement as to whether the Party that originally submitted the HSBI failed to indicate with sufficient precision portions of documents containing HSBI that may be included in the Redacted Version Appendix and to produce, if necessary, a non-HSBI summary in sufficient detail to permit a reasonable understanding of the substance of the information, and may take appropriate action to ensure that the provisions of this paragraph are satisfied.
- (e) The Full HSBI Version Appendix shall be kept in an HSBI location, as appropriate, in the form of an encrypted USB key. If it is not practical to keep the Full HSBI Version Appendix in an HSBI location, the Party may keep it in a locked security container in a Secure site in the form of an encrypted USB key.
- (f) The encrypted USB key containing the Full HSBI Version Appendix shall bear the label marked 'FULL VERSION OF HSBI APPENDIX TO SUBMISSION' and indicate the name of the Party that submitted the HSBI. In addition, the HSBI Appendix itself shall be marked with heading with double bold square brackets on each page in an electronic file that contains the notation 'FULL VERSION OF HSBI APPENDIX TO SUBMISSION'. The electronic file containing the HSBI Appendix shall have a file name that contains the letters "HSBI VERSION".
- (g) The Party shall submit one copy of the Full HSBI Version Appendix to the Panel (through the DS Registry) and two copies to the other Party in the form of two encrypted USB keys. The Full HSBI Version Appendix shall not be transmitted via e-mail. Parties shall agree between themselves beforehand on the name of the Approved Person that is to receive the encrypted USB key.
- (h) The Party shall commence transfer of the encrypted USB keys containing the Full HSBI Version Appendix no later than the deadline for the submission concerned, and, at the same time, provide the Panel and the other Party with proof that this has been done.
- (i) No more than one working day in advance of a Panel meeting with the parties, a Party may, exclusively at that Party's Permanent Mission in Geneva, use the encrypted USB key to produce no more than one hard copy of the Full HSBI Version Appendix for each HSBI Approved Person planning to attend that Panel meeting. All paper versions produced pursuant to this subparagraph shall be collected by the Party concerned and destroyed immediately after the conclusion of the meeting.
- (j) The Panel and WTO Approved Persons designated pursuant to paragraphs 8 and 22 as being additionally authorized to access HSBI may, exclusively on the WTO premises, produce paper versions of the Full HSBI Version Appendix for the purpose of a Panel meeting with the parties and/or an internal meeting. When not in use, these paper versions shall be stored in a locked container at the HSBI location referred to in paragraph 9(d). All paper versions produced pursuant to this subparagraph shall be destroyed after the Conclusion of the Panel Process as defined in paragraph 3.
- (k) Parties are encouraged to submit versions of exhibits containing HSBI from which all HSBI has been deleted. Such exhibits shall be referred to as "HSBI-Redacted Version Exhibits". HSBI-Redacted Version Exhibits may contain BCI.
- (i) A Party may submit HSBI-Redacted Version Exhibits prepared by that Party to the Panel, and serve them on the other Party in accordance with the applicable procedures, at the time it serves the submission to which the exhibit relates.

(ii) If a HSBI-Redacted Version Exhibit is not submitted by the Party submitting the exhibit, an HSBI-Approved Person representing the other Party may prepare an HSBI-Redacted Version Exhibit of any such exhibit.

(iii) HSBI-Redacted Version Exhibits may be prepared by an HSBI-Approved person, at an HSBI location, by deleting the HSBI in the exhibit (identified by double brackets) from such exhibit and either printing or photo-copying the resulting document containing no HSBI. The deletion of HSBI from the resulting document shall be verified by a person authorized for this purpose by the Party that submitted the exhibit(s) in question. The resulting document containing no HSBI (but which may contain BCI) will constitute the HSBI-Redacted Version Exhibit of such exhibit, and may be removed from the HSBI location.

(iv) The Parties shall cooperate to the maximum extent possible to make available necessary facilities, including printers, photo-copiers, and physical means for the deletion of text from a document, to enable the preparation of HSBI-Redacted Version Exhibits, including making available an HSBI-Approved Person for purposes of the verification provided for in paragraph (iii) above. HSBI-Redacted Version Exhibits may be prepared by HSBI-Approved Persons upon request during the times the designated room at the relevant HSBI location is available, as provided for in paragraph 54 of these Procedures.

(v) The Panel shall resolve any disagreement arising from the operation of this subparagraph, and may take appropriate action to ensure that the provisions of this paragraph are satisfied.

(l) The Panel reserves the right, after consulting the parties, to amend the provisions of this paragraph at any time in order to accommodate situations arising during Panel meetings, and the preparation of the interim report and the final report.

61. The Panel shall not disclose HSBI in its report, but may make statements or draw conclusions that are based on the information drawn from the HSBI.

VII. Responsibility for compliance

62. Each Party and Third Party is responsible for ensuring that its Approved Persons and Third Party BCI Approved Persons comply with these procedures to protect BCI and HSBI submitted by each Party and Third Party, as well as with enforceable codes of professional conduct to which its Approved Persons or other Outside Advisors are subject. WTO Approved Persons shall comply with these procedures to protect BCI and HSBI submitted by a Party or Third Party. WTO Approved Persons are covered by the WTO Rules of Conduct. As provided for in the WTO Rules of Conduct, evidence of breach of these Rules may be submitted to the Chair of the DSB or to the Director-General of the WTO, or his designee, as appropriate, for appropriate action pursuant to Section VIII of the WTO Rules of Conduct.

VIII. Additional Procedures

63. After consulting with the Parties, the Panel may apply any other additional procedures that it considers necessary to provide additional protections to the confidentiality of BCI or HSBI or other types of information not explicitly covered by these Procedures but which the Panel considers may be of assistance in adjudicating the claims before it.

64. The Panel may, with the consent of both Parties, waive any part of these procedures. Such "waiver" shall be specifically set forth in writing and signed by a representative of both Parties.

IX. Return and Destruction

65. Except as provided for in paragraph 66, after the Conclusion of the Panel Process as defined in paragraphs 3(a), 3(c) or 3(d), within a period to be fixed by the Panel, WTO Approved Persons, the Parties and Third Parties (along with all Approved Persons) shall destroy or return all documents (including electronic material) or other recordings containing BCI or HSBI to the Party or Third Party that submitted such documents or other recordings.

66. The WTO Secretariat shall retain one hard copy and one electronic version of any final report of the Panel containing BCI and HSBI, and one electronic version of all documents containing BCI and HSBI submitted to the Panel, recorded on encrypted USB key(s), to be kept in sealed containers in a locked cabinet on the premises of the WTO Secretariat. Such documents shall be destroyed five years after the Conclusion of the Panel Process, provided that the Secretariat is satisfied that no further proceedings in the same dispute, which require access to the original record, will be initiated.

67. In the event of the Conclusion of the Panel Process as described in paragraph 3(b), the Secretariat will inform the Appellate Body of these procedures and will transmit to the Appellate Body any BCI/HSBI governed by these Procedures. Such transmission shall occur separately from the rest of the Panel record, to the extent possible. Following the adoption by the DSB of the Appellate Body report pursuant to Article 17.14 of the DSU, or a decision by the DSB by consensus not to adopt the Appellate Body Report pursuant to Article 17.14 of the DSU, the provisions of paragraphs 65 and 66 shall apply.
