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**United Nations
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Persistent Organic Pollutants Review Committee**

First meeting

Geneva, 7–11 November 2005
Item 4 of the provisional agenda*

Operational procedures

**Confidentiality procedures and arrangements under selected
international agreements and forums****

Note by the Secretariat

1. As referred to in document UNEP/POPS/POPRC.1/2, the present note has been prepared by the Secretariat to assist the Committee in establishing confidentiality arrangements as required under paragraph 19 of its terms of reference (UNEP/POPS/COP.1/31, annex I, decision SC-1/7). Compiled below is information about confidentiality arrangements and procedures established under selected international agreements and forums with relevance for the Stockholm Convention.

**I. Rotterdam Convention on the Prior Informed Consent
Procedure for Certain Hazardous Chemicals and Pesticides in
International Trade**

2. Article 14 of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, entitled “Information exchange”, states: “Parties that exchange information pursuant to this Convention shall protect any confidential information as mutually agreed”. It also identifies information that shall not be regarded as confidential: information provided under Articles 5 and 6 of the Convention, information contained in safety data sheets, the expiry date of the chemical, information on precautionary measures and summary results of toxicological and ecotoxicological tests. It further provides that the production date of the chemical shall generally not be considered confidential.

3. The technical subsidiary body of the Rotterdam Convention, the Chemical Review Committee, has not so far been confronted with the issue of confidential information submitted for its assessment.

* UNEP/POPS/POPRC.1/1.

** Stockholm Convention, article 9, para. 5; Report of the Conference of the Parties of the Stockholm Convention on Persistent Organic Pollutants on the work of its first meeting (UNEP/POPS/COP.1/31); annex I, decision SC-1/7.

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II. Montreal Protocol on Substances that Deplete the Ozone Layer

4. Under the terms of reference of assessment panels operating under the Montreal Protocol on Substances that Deplete the Ozone Layer, as adjusted and amended, there are no specific requirements with respect to confidentiality arrangements. If, however, information under consideration by the members of assessment panels, in particular regarding data on production and consumption of ozone-depleting chemicals from Parties that have requested that such information be treated as confidential, it will be treated as such in accordance with decision I/11 of the first Meeting of the Parties to the Montreal Protocol. Furthermore, it should be noted that meetings of the assessment panels are held in private and, therefore, may be deemed to be implicitly confidential. All assessment reports, however, are published openly and are accessible to the public.

III. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal

5. The text of the Basel Convention contains no references to confidential information. Paragraph 26 of the terms of reference for the mechanism for promoting implementation and compliance (decision VI/12 of the Conference of the Parties to the Basel Convention) stipulates: "The Committee, any Party or others involved in its deliberations shall protect the confidentiality of information received in confidence."

6. For the purposes of implementation of the Basel Convention at the national level, information is qualified as confidential by the Parties to the Convention in accordance with and to the extent required by domestic legislation. As an example, Council Regulation (EEC) No. 259/93 on the supervision and control of shipments of wastes within, into and out of the European Community indicates in paragraph 7 that information given in accordance with paragraphs 4 to 6 of the regulation, which deal with notifications and contracts for shipments of wastes, shall be treated confidentially in accordance with existing national regulations.

IV. Convention on International Trade in Endangered Species of Wild Fauna and Flora

7. Under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), confidentiality is extended primarily to enforcement information and data. Some examples follow:

- (a) Alerts sent by the Secretariat to Parties are confidential documents on enforcement matters and are protected as such;
- (b) MIKE (Monitoring the Illegal Killing of Elephants) staff maintain the confidentiality of all sensitive and confidential data and information at all times until such information is placed in the public domain;
- (c) Confidential enforcement data is excluded from the assessment of data provided on the Seizure Data Collection form for ivory seizures under the Elephant Trade Information System;
- (d) The secretariat may permit national enforcement authorities to receive confidential information under CITES.

8. As a rule, a Party wishing to keep its national information confidential must take the initiative to do so. On the other hand, when information or data is issued by the Secretariat, it is the Secretariat that decides on the confidentiality status of that information or data.

9. The work of the Standing Committee involves confidentiality issues: some reports to the Committee have been kept confidential because they contained references of an operational nature and referred to organized crime issues. Some information provided orally to the Committee, for example regarding security stamps, has been kept confidential. Rule 31 of the rules of procedure of the Committee (2002) states:

"Any working document submitted for consideration by the Committee may be classified as 'restricted' or 'confidential' by the Secretariat when it determines that the document contains information that might be detrimental if disclosed to non-Parties or to organizations; Parties

should use their best efforts to maintain such restriction or confidentiality unless the classification has been removed by the Secretariat or the Committee”.

The same provisions are included in the rules of procedure for the Animals (rule 30) and Plant (rule 29) Committees.

10. The Conference of the Parties continues work on the protection of confidential enforcement information. Thus, at its twelfth meeting, the Conference adopted decision 12.88, which states:

“The Secretariat shall convene a meeting of experts, including representatives of the CITES Tiger Enforcement Task Force, ICPO-Interpol and the World Customs Organization, to: identify measures to improve the flow of enforcement-related data to and from relevant international, regional and national law enforcement organizations, CITES Management Authorities and the CITES Secretariat; to assist the coordination of investigations regarding violations of the Convention; and to help maintain appropriate levels of confidentiality regarding law enforcement information.”

11. In the background section of document 23 prepared by the Secretariat for the thirteenth meeting of the Conference of the Parties (2004), entitled “Interpretation and implementation of the Convention: general compliance issues: enforcement matters”, the following observation is made:

“It is widely recognized in the law enforcement community that many sources of useful and important information wish to remain anonymous and that confidentiality of information must be maintained. Anonymity and confidentiality are also enshrined in the criminal laws and judicial systems of many countries. Resolution Conf. 11.3 recognizes their importance and encourages Parties to evaluate and utilize such sources for enforcement purposes. It is only sensible that the Secretariat also adopts such an approach in its work.”

12. The guidance section of the same document contains among others the following paragraphs:

“2. It should be clearly indicated, when information is submitted to the Secretariat, whether the source is to remain anonymous or confidential and to what degree. For example, whether the identity of the source can be disclosed to official law enforcement agencies, Management Authorities or the public, or restricted solely to the Secretariat. Suppliers should be aware that requests for sources to remain anonymous or confidential must be made when the information is first submitted, as it may be too late to respond to such requests made subsequently.

...

9. Wherever practical, the Secretariat will, unless requested not to do so, advise persons and organizations supplying information how it has made use of the information and the results of any investigations conducted. The detail relating to the results of investigations may, of course, have to be restricted owing to it being subject to court proceedings or confidential for other reasons, and these will be explained by the Secretariat.

10. Acceptance by the Secretariat should not be construed as indicating validation of the information or its source”.

V. Cartagena Protocol on Biosafety to the Convention on Biological Diversity

13. Article 21 of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity addresses the treatment of confidential information in the context of the “transboundary movement, transit, handling and use of all living modified organisms.” According to that article and in accordance with the “advance informed agreement” procedure and other procedures specified by the Protocol, the “notifier” is required to submit information to the Party of import so as to allow the latter to take a decision on the import of the living modified organism in question. In return, the Party of import has an obligation to permit the notifier to identify information that it wishes to be treated as confidential. The Party of import may request the notifier to justify why certain information should be kept confidential, and in the event of difference, must consult the notifier prior to any disclosure.

14. Each Party is required to protect confidential information received under the Protocol, and must put in place procedures to protect and treat such information in “a manner no less favourable than its

treatment of confidential information in connection with domestically produced living modified organisms.” The Party of import shall not use confidential information for commercial purposes without the written consent of the notifier. Unless the notifier withdraws its notification, certain information is not considered to be confidential, including the name and address of the notifier, a general description of the living modified organism, a summary of the risk assessment pertaining to the organism, and methods and plans for emergency response.

15. Once information is made available to the Biosafety Clearinghouse in accordance with article 20 and other provisions of the Protocol, it will not be considered confidential, because the objective of the article is to make information publicly available.

16. Confidentiality levels and concerns are considered under the Biosafety Clearinghouse. The structure of the Clearinghouse aims to ensure security and validation of information dealing with different types of data having different levels of confidentiality and validation needs. Any information which is not specified as non-confidential in the Protocol can potentially be classified as confidential (with appropriate justification) and must be sufficiently protected when being circulated through the Clearinghouse. Parties submitting such information should mix it with non-confidential information and should store it exclusively in separate files annexed to their main submission. Special operational procedures for protection of confidential business information have been established for the Clearinghouse and its database. An example of confidential data being circulated through an information clearing-house is that relating to experimental field trials of genetically modified organisms conducted in the European Union under directive 90/220/EEC. More information on operational procedures regarding confidentiality of data may be found in the database content overview at <http://food.jrc.it/gmo/>.

VI. Kyoto Protocol to the United Nations Framework Convention on Climate Change

17. Detailed procedures for protection of confidential information established under the Kyoto Protocol to the United Nations Framework Convention on Climate Change have been codified in several documents adopted by the Conference of the Parties to the Convention to guide the work of the Subsidiary Body for Scientific and Technological Advice; these include the Code of Practice for the Treatment of Confidential Information in the Technical Review of Greenhouse Gas Inventories from Parties Included in Annex I to the Convention; the procedure to implement this Code of Practice; and the Agreement for Expert Review Services. These documents are reproduced in annex I to the present note, as they give a broad overview of possible options for securing confidentiality of business information in an international technical review and for personal conduct of those individuals handling confidential information.

18. At its tenth session, the Conference of the Parties to the Convention adopted a decision entitled “Issues relating to the technical review of greenhouse gas inventories of Parties included in Annex I to the Convention and the implementation of article 8 of the Kyoto Protocol”, in which it requested ...

“...Parties included in Annex I to the Convention (Annex I Parties) whose inventories contain information that is designated as confidential to provide this information during centralized and in-country reviews, at the request of an expert review team, in accordance with the code of practice for the treatment of confidential information adopted by decision 12/CP.9”.

19. It also requested “the secretariat to facilitate timely access by expert review teams to information during these reviews, in accordance with the code of practice for the treatment of confidential information adopted by decision 12/CP.9”

20. In the same decision, the Conference decided that ...

“... an Annex I Party may, at its discretion and in cooperation with the secretariat, make confidential inventory information available to expert review teams during those periods in which experts are neither present in the country under review nor at the offices of the secretariat, through appropriate procedures, provided that these procedures do not entail additional financial costs for the secretariat. A Party’s decision not to submit confidential information in those periods does not constitute an inconsistency with the reporting requirements relating to Annex I Parties’ greenhouse gas inventories.”

VII. World Trade Organization

21. The Committee may wish to bear in mind the eighth recital of the preamble to the Convention Establishing the World Trade Organization (WTO), which recognizes “that this Convention and other international agreements in the field of trade and the environment are mutually supportive”.

22. The Committee may also wish to bear in mind paragraph 2 of article 30 of the Vienna Convention on the Law of Treaties, on application of successive treaties relating to the same subject matter, which reads as follows: “When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.”

23. The procedures adopted by WTO may be found to be relevant to the treatment of confidential information in the context of the Persistent Organic Pollutants Review Committee. For example, the WTO agreement on trade safeguards contains specific rules for the handling of confidential information in the context of an investigation. In general, information for which confidential treatment is requested must be accompanied by a public summary thereof or an explanation of why no such summary is possible. If confidentiality is found not to be warranted, and the party submitting the information is unwilling to summarize it or authorize its disclosure, the authorities may disregard the information, unless it is demonstrated through other sources that the information is correct.

24. Provisions of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (annex 2 to the Convention Establishing the World Trade Organization) oblige all members of the WTO Appellate Body and its staff to treat proceedings of the Appellate Body, including written submissions and other documents filed by Parties and third parties designated by other Members as confidential. It is also recognized that a Member’s obligation to maintain the confidentiality of these proceedings extends to the individuals whom that Member selects to act as its representatives, experts and consultants. In addition, Members of the Appellate Body and its staff are covered by article VII:1 of the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes, which in pertinent part provides: “Each covered person shall at all times maintain the confidentiality of dispute settlement deliberations and proceedings together with any information identified by a party as confidential.”

25. The Committee may also wish to consider the Procedures Governing Business Confidential Information, which were adopted by a Panel of the Appellate Body hearing a case involving Brazil and Canada in 1999 and were later considered as precedent. For easy reference, the procedures are reproduced in annex II to the present note.

VIII. Intergovernmental Forum on Chemical Safety

26. At its fourth meeting (Forum IV) in 2003, the Intergovernmental Forum on Chemical Safety (IFCS) adopted the following “priority for action”:

“For all chemicals in commerce, appropriate information detailing the inherent hazards should be made available to the public, and generated where needed. Essential health, safety and environmental information should be accessible. Other information should be accessible according to a balance between the public right to know and the need to protect valid confidential business information and legitimate proprietary interests.”

Forum IV final report, Executive Summary.

27. In its Programme area A, “Key Goals and Priorities”, IFCS at Forum IV indicated that it recognized the need to ensure that essential health, safety and environmental information is not withheld under confidentiality restrictions. In programme Area D, “Obstacles”, it indicated that the lack of information exchange due to confidentiality was an obstacle to preventing industrial accidents.

Annex I

UNFCCC document FCCC/CP/2003/6/Add.1, ANNEX II

Code of practice for the treatment of confidential information in the technical review of greenhouse gas inventories from Parties included in Annex I to the Convention

1. Pursuant to Article 12, paragraph 9, of the Convention, a Party has a right to designate information as confidential, in accordance with criteria to be established by the Conference of the Parties, and request that this information be aggregated by the secretariat to protect its confidentiality before being made available to any of the bodies involved in the communication and review of information. Should a Party included in Annex I to the Convention (Annex I Party) voluntarily allow access to inventory information other than that required by Article 12, the provisions in this code of practice shall apply.
2. Prior to the provision of specific national greenhouse gas inventory information that an Annex I Party wishes to be considered as confidential, that Party may assert a confidentiality claim by submitting a notification, signed by the appropriate focal point (national or inventory), indicating that the information is considered confidential and requesting that it be protected according to the procedures in this code of practice. The assertion of confidentiality shall be accompanied by documentation of the Party's basis for such protection, including applicable laws and regulations.
3. The secretariat shall confirm receipt of an assertion of confidentiality and provide a written assurance to the Party that the information will be protected in accordance with these procedures.
4. Any confidential information shall be submitted separately from other inventory information, and in hard copy only, and shall be clearly designated as confidential by the Party.
5. The secretariat shall ensure that any inventory information it receives in the course of the inventory reporting and review process, which has been designated as confidential by the Party in accordance with paragraphs 2–4 above, is protected in accordance with these procedures.
6. Information designated as confidential shall be stored in a secure, locked location. Only authorized staff and review team members shall be given access to this information, in accordance with procedures to be established.
7. All review team members shall be required to sign an agreement for expert review services, which shall include provisions for protection of confidential information. The obligation of a review team member to protect confidential information shall continue after completion of his or her services.
8. Expert reviewers shall not be given access to information designated as confidential if a known potential conflict of interest with regard to that information has been disclosed in accordance with the agreement for expert review services.
9. The secretariat shall ensure that any expert with a known potential conflict of interest relating to specific confidential information submitted by the reviewed Party is excluded from participating in the review of the Party concerned.
10. Information designated as confidential shall not be distributed or disclosed to non-authorized individuals and/or organizations and shall not be distributed beyond the secretariat's control.
11. Secretariat staff with a need to handle information designated as confidential shall be instructed in responsibilities and trained in procedures to protect the confidentiality of such information.
12. Expert review team members with a need to handle information designated as confidential shall be instructed in responsibilities and trained in procedures to protect the confidentiality of such information.

13. The secretariat shall ensure that review experts are made aware of their personal liability and of the potential consequences, including legal consequences, that may arise from disclosure by them of confidential information.
14. When an Annex I Party, in accordance with Article 12, paragraph 9, of the Convention, gives an expert review team access to confidential information during an in-country review visit, access to the information would be under the supervision of the Party and in accordance with the Party's own procedures. In such a case, the members of expert review teams shall still be obliged to protect confidential information, in accordance with the agreement for expert review services.
15. Any internal documentation developed by the secretariat or by the review team which contains information designated as confidential shall also be considered confidential and shall be handled in accordance with the above procedures. Confidential information shall not be included in review reports.
16. The secretariat shall make publicly available information on its policies and procedures to protect confidential information, including this code of practice.

UNFCCC procedures to implement the Code of Practice for the Treatment of Confidential Information in the Technical Review of Greenhouse Gas Inventories from Parties included in Annex I to the Convention

1. The secretariat will follow the “Code of practice for the treatment of confidential information in the technical review of greenhouse gas inventories from Parties included in Annex I to the Convention” as agreed by the COP at its ninth session.
2. Independent of the “Code of practice for the treatment of confidential information in the technical review of greenhouse gas inventories from Parties included in Annex I to the Convention”, all secretariat staff are subject to United Nations regulations and standards of conduct, even after termination of the employment contract. This contains specific provisions that prohibit staff from disclosing information made known to them in their official role.
3. The secretariat will establish the following internal procedures to implement the code of practice:
 - a. The manager of the Inventories sub-programme is responsible for ensuring proper receipt, storage and handling of confidential information.
 - b. Only authorized personnel will have access to the location. The confidential information will be stored in a secure, locked cabinet. The secretariat will store the confidential information in a locked filing cabinet. This will only be used to store confidential information.
 - c. Confidential information will only be accepted in hard copy from Parties, in accordance with the code of practice. The information will not be entered in the GHG database, to avoid possible disclosure of confidential information.
 - d. All documents submitted from Parties with confidential information will be marked clearly as “Confidential” on a separate cover page.¹
 - e. The secretariat will establish a logging system for tracking the receipt and handling of confidential documents. The system will record the date when the information is received, the Party that submitted the information and assign a log number to the document. In addition, the system would track sign out and return of confidential documents by authorized personnel.
 - f. All staff of the Inventories sub-programme, will be given instruction on correct procedures for handling confidential information.
 - g. Individual staff will be authorized to access confidential information on a need-to-know basis, i.e., the staff member responsible for coordinating the review of the Party concerned.
 - h. Staff who are authorized to access confidential documents will ensure that the documents are never left unattended in an empty office. If confidential information must be transported to an external location, for example during a centralized review conducted in a separate building, the staff member shall ensure that the document is under his or her supervision at all times, and in a sealed envelope.
 - i. All inventory expert reviewers will have agreed to follow the code of practice and these procedures through the “Agreement for expert review services”. Access of individual experts to specific confidential information will be authorized on a need-to-know basis, e.g. the reviewer(s) responsible for the IPCC sector where there is confidential information, and the lead reviewers for that team. Access of expert reviewers to confidential documents will only be permitted under the supervision of the responsible programme officer, designated in sub-paragraph g above.
 - j. The manager of the Inventory sub-programme will verify that each reviewer (with need to know) has no disclosed conflict of interest with regard to confidential information, in line with the

¹ It is expected that Parties will submit confidential information with labels marking it as such on all pages.

“Agreement for expert review services”, before providing authorization for that expert to access to that information. Reviewer will not be placed on a particular team if there is a known conflict of interest with regard to the specific confidential information.

k. Under no circumstances will experts be allowed to copy confidential information, or review it away from secretariat supervision.

l. Confidential information will not be sent to expert review teams in a desk review.

m. During an in-country inventory review, access to confidential inventory information may be provided to authorized members of the ERT at the discretion of the Party concerned, and in accordance with that Party’s procedures. If the Party provides such access, the ERT should make every effort to clarify any issues related to confidential information during the visit, as the ERT will not have access to the confidential information after the visit.

n. During a centralized reviews the secretariat shall provide authorized members of the ERT with access to relevant confidential information in accordance with these procedures. The ERT will not have access to any confidential information after the week of the centralized review.

Agreement for Expert Review Services

The secretariat of the United Nations Framework Convention on Climate Change (UNFCCC) has invited you to participate as an expert in the technical review of the greenhouse gas inventories of Parties included in Annex I to the Convention (Annex I Parties) (the “review”). Your service as an expert reviewer is requested on the basis of your expertise in greenhouse gas inventories, and will help to ensure that the Conference of the Parties (COP) has accurate and reliable information on greenhouse gas emissions. Reviews are conducted under the authority of the Subsidiary Body for Scientific and Technological Advice and the auspices of the UNFCCC, as set out in decision 2/CP.1, and in accordance with the guidelines for review of greenhouse gas inventories adopted by decision 19/CP.8 (FCCC/CP/2002/8).

The COP, by its decision 12/CP.9, decided that, beginning in 2004, all members of expert review teams participating in the technical review of greenhouse gas inventories from Annex I Parties shall be required to sign this agreement for expert review services, prepared based on the elements included in annex III to that decision (FCCC/CP/2003/6/Add.1). Your participation in the review is subject to the terms and conditions set forth below.

Conduct in the review

1. The expert shall use the UNFCCC reporting guidelines on annual inventories, adopted by decision 18/CP.8, and the Revised 1996 Intergovernmental Panel on Climate Change (IPCC) Guidelines and IPCC good practice guidance as the bases for the technical review of inventories, following the procedures and deadlines for each stage as set out in the inventory review guidelines, under the direction of the Convention secretariat.
2. In conducting review activities, the expert shall perform duties in an objective, neutral and professional manner and serve in the best interest of the Convention. The expert shall notify the secretariat of any known potential conflict of interest relating to a specific review activity in which the expert has been invited to participate.
3. The expert shall work cooperatively with other review team members, in particular lead reviewers and other experts working in the same subsector, with a view to achieving consensus in decision-making within the expert review team. If, under exceptional circumstances, consensus cannot be reached within an expert review team, lead reviewers from other expert review teams may be asked to work cooperatively with a team to assist it in achieving consensus.
4. The expert will be advised of the time requirements and deadlines for the review process, and will do everything in his or her power to meet these deadlines. If, due to unforeseen circumstances, the expert is not able to perform his or her review duties in the time allotted for them, he or she shall notify the secretariat, lead reviewers of the team and other members of the team as soon as possible.

Information provided during the review

5. Information provided by Parties under review and by the secretariat is provided for the sole purpose of the inventory review and shall not be used by expert review team members for purposes other than the inventory review. In this regard, the expert shall not disclose any information acquired during the review before finalization and publication of the inventory review report; and shall not disclose any non-published information acquired during the review without the express agreement of the Party concerned and the secretariat. Further, the expert shall not disclose information about the review, including any findings, or the status of internal procedures, to anyone except the Party concerned, the secretariat, members of the review team and, as necessary, other lead reviewers, while the review is being conducted.
6. The expert has an obligation to protect any confidential information provided in the course of the review both during and after the term of service. If the expert is specifically authorized to handle confidential inventory information, he or she shall adhere to established UNFCCC procedures for treatment of this information, as instructed by the secretariat. In this case, the expert shall be informed by the secretariat that he or she may be personally liable and shall be informed by the secretariat of the potential consequences, including legal consequences, that may arise from disclosure of the confidential

information by the expert. The expert shall notify the secretariat of any known potential conflict of interest relating to specific confidential information submitted by the Annex I Party being reviewed before the information is viewed.

Consequences

7. Failure to comply with the conditions of this agreement may result in the expert's removal from the review.

Recognition

8. Upon request, the secretariat will provide a letter of recognition for services to experts who have participated in a review in accordance with the terms and conditions of this agreement, with a copy to the national focal point.

Acknowledgement

Please acknowledge your agreement with the terms and conditions for your participation in the review process by signing, dating and returning to the UNFCCC secretariat a copy of this agreement. For the secretariat of the United Nations Framework Convention on Climate Change

Printed name: _____

Signature: _____

Date: _____

Acknowledged and agreed:

Printed name: _____

Signature: _____

Date: _____

Annex II

WTO document WT/DS70/R, Annex 1

Procedures governing business confidential information and declaration of non-disclosure

I. Basic principle

1. The treatment of information as Business Confidential under these procedures imposes a substantial burden on the Panel and the parties. The indiscriminate designation of information as Business Confidential could limit the ability of a party to fully include in its litigation team individuals who have particular knowledge and expertise relevant to presenting the party's case, impede the work of the Panel and complicate the Panel's task in formulating credible public findings and conclusions. Finally, the Panel recalls that all WTO Members are obliged under Article 25.9 of the SCM Agreement to provide information regarding the nature and extent of any subsidy "in a comprehensive manner" and with "sufficient details to enable the other Member to assess their compliance with the terms" of the SCM Agreement. Accordingly, while the Panel recognizes that the parties have a legitimate interest in protecting sensitive Business Confidential information, *the Panel expects that parties will exercise the utmost restraint in designating information as Business Confidential.*

II. Definitions

"approved person" means:

- i) a Panel member;
- ii) a representative;
- iii) a Secretariat employee; or
- iv) a PGE member,

who has filed with the Chairman of the Panel a Declaration of Non-disclosure.

"conclusion of the Panel" means when, pursuant to DSU Article 16.4, the Panel report is:

- i) adopted;
- ii) not adopted; or
- iii) the Panel report is appealed and the report of the Appellate Body is adopted.

"Business Confidential information" means any information that has been designated as Business confidential by the party submitting the information, and that is not otherwise available in the public domain.

"Declaration of Non-disclosure" means a copy of the declaration set out in Annex II, signed and dated by the person making the declaration.

"designated as Business Confidential" means:

- i) for printed information, clearly marked with the notation 'BUSINESS CONFIDENTIAL INFORMATION' and with the name of the party that submitted the document;
- ii) for binary-encoded information, clearly marked with the notation 'BUSINESS CONFIDENTIAL INFORMATION' on a label on the storage medium, and clearly annotated with the notation 'BUSINESS CONFIDENTIAL INFORMATION' in the binary-encoded files; and
- iii) for uttered information, declared by the speaker to be "Business Confidential information" prior to the disclosure.

"dispute" means Brazil's challenge to certain Canadian measures under Article 4 of the WTO Agreement on Subsidies and Countervailing Measures, WT/DS70, entitled "Canada – Measures Affecting the Export of Civilian Aircraft".

“DSU” means the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.

“Geneva mission” means the buildings and grounds of Brazil and Canada at Ancienne Route 17B, 1218 Grand-Saconnex and Rue du Pré-de-la-Bichette 1, 1202 Geneva, respectively.

“information” means:

- i) printed information;
- ii) binary -encoded information stored in computer diskettes, computer disc drives, CD roms, or other electronic media; or
- iii) uttered information,

including without limiting the generality of the foregoing, offers, agreements, reports, forecasts, compilations, studies, plans, presentations, charts, graphs, pictures and drawings.

“Panel” means the WTO panel established pursuant to DSU Article 6 by the 23 July 1998 decision of the WTO Dispute Settlement Body to examine the dispute.

“Panel meeting” means a substantive meeting of the Panel with the parties or the interim review meeting of the Panel with the parties, as described in the working procedures of DSU Appendix 3.

“Panel member” means a person selected pursuant to DSU Article 8 to serve on the Panel.

“Panel process” means the process of the Panel as described in DSU Articles 12, 15 and 16, until and including the conclusion of the Panel.

“party” means Brazil or Canada.

“PGE member” means a person appointed to the Permanent Group of Experts established pursuant to SCM Agreement Article 24, and who has been requested to assist the Panel pursuant to Article 4.5 of the SCM Agreement.

“premises of the WTO” means buildings and grounds of the WTO at Centre William Rappard, Rue de Lausanne 154, Geneva, Switzerland.

“representative” means:

- i) an employee of a party;
- ii) an agent for all purposes of a party; or
- iii) a legal counsel or other advisor of a party,

who has been authorized by a party to act on behalf of such party in the course of the dispute and whose authorization has been notified to the Chairman of the Panel and to the other party, but in no circumstances shall this definition include an employee, officer or agent of a private company engaged in aircraft manufacturing.

“SCM Agreement” means the WTO *Agreement on Subsidies and Countervailing Measures*.

“Secretariat” means the Secretariat of the World Trade Organization.

“Secretariat employee” means a person employed or appointed by the Secretariat who has been authorized by the Secretariat to work on this dispute and whose authorization has been notified to the Chairman of the Panel, including without limiting the generality of the foregoing, translators and transcribers present at the Panel hearings.

“secure location” means a locked storage receptacle on the premises of the WTO chosen by the Secretariat to provide secure storage for Business Confidential information.

“submit” means:

- i) the filing by a party of printed or binary-encoded information at the Secretariat during the dispute;
- ii) the filing by a party of printed or binary-encoded information with the Panel during a Panel hearing; or
- iii) the uttering of information during a Panel hearing.

"third party" means a Member having notified its interest in the dispute to the DSB pursuant to DSU Article 10.

III. Scope

1. These procedures apply to all Business Confidential information submitted during the Panel process.

IV. Obligation on Parties

1. Each party shall ensure that its representatives comply with these procedures.

V. Submission by a Party

1. When submitting information, a party may designate all or any part or parts of that information as Business Confidential information. Business Confidential information shall be submitted in two copies: one copy of the Business Confidential information shall be submitted to the Secretariat; the other copy of the Business Confidential information shall be submitted to the other party at its Geneva mission.
2. If, taking into the account the Basic Principle stated in Article I, the Panel considers that a party has designated as Business Confidential information which is not reasonably entitled to such treatment, the Panel may decline to consider such information. In such a case, the party submitting the information may, at its discretion:
 - i) withdraw the information, in which case the Panel and the other party shall promptly return the information to the party submitting it; or
 - ii) withdraw the designation of the information as Business Confidential.
3. When submitting printed or binary-encoded Business Confidential information, the party shall also provide:
 - i) a non-Business Confidential edited version, redacted in such a manner as to convey a reasonable understanding of the substance of the information;
 - ii) a non-Business Confidential summary in sufficient detail to convey a reasonable understanding of the substance of the information; or
 - iii) in exceptional circumstances, a written statement:
 - (a) that such a non-Business Confidential edited version or non-Business Confidential summary cannot be made, or
 - (b) that such a non-Business Confidential edited version or non-Business Confidential summary would disclose facts that the party has a proper reason for wishing to keep business confidential.
4. If the Panel considers that a non-Business Confidential edited version or summary does not fulfill the requirements of paragraph 3(i) or (ii), or that such exceptional circumstances as justify a statement pursuant to paragraph 3(iii) do not exist, the Panel may decline to consider the Business Confidential information in question. In such a case, the party submitting the information may, at its discretion,

- i) withdraw the information, in which case the Secretariat and the other party shall promptly return the information to the party submitting it; or
- ii) comply with the provisions of paragraph 3 to the satisfaction of the Panel.

5. When uttering Business Confidential information at a Panel meeting, the speaker shall also provide a brief non-Business Confidential oral statement in sufficient detail to convey a reasonable understanding of the substance of the information that will be uttered.

VI. Storage

1. The Secretariat shall store all Business Confidential information submitted in the secure location when not in use by an approved person.
2. Each party shall store all Business Confidential information submitted to it by the other party in a safe in a locked room at the premises of its Geneva mission, when not in use by a representative who is an approved person. Only a representative who is an approved person shall be given authority to unlock the locked room containing the safe, and the locked safe. If requested, either party may visit the other party's Geneva mission to review the proposed location of the safe, and to propose any changes. Any disagreements between the parties regarding the location of the safe, or any other aspect related to safeguarding of the Business Confidential information will be decided by the Panel.
3. An approved person shall take all necessary precautions to safeguard Business Confidential information when in use.

VII. Obligation not to disclose

1. Where Business Confidential information has been submitted pursuant to these procedures, no approved person who views or hears such information shall disclose that information, or allow it to be disclosed, to any person other than another approved person, except in accordance with these procedures.
2. The Panel shall not disclose Business Confidential information in its interim and final reports, but may make statements of conclusion drawn from such information.

VIII. Disclosure

1. The Secretariat shall make available for viewing or hearing only on the premises of the WTO any Business Confidential information requested by an approved person.
2. Each party shall promptly, and in a convenient manner, make available for viewing on the premises of its embassy or other diplomatic mission in the capital of the other party or, at the request of an approved person, on the premises of its embassy or other diplomatic mission at some other location, any Business Confidential information requested by an approved person.
3. Business Confidential information stored at the Geneva mission of a party may only be viewed by a representative of that party who is an approved person.
4. An approved person viewing or hearing Business Confidential information may take written summary notes of that information for the sole purpose of the Panel process.
5. Business Confidential information shall not be copied, distributed, or removed from the premises of the WTO, or from the premises of a party's Geneva mission, or from the premises of the embassy or other diplomatic mission referred to in paragraph 2, except as specifically provided in these Procedures.
6. Notwithstanding paragraph 5. above, a Panel member may remove a copy of Business Confidential information from the premises of the WTO. Any copies of Business Confidential information removed from the premises of the WTO by a Panel member shall be used exclusively by

that Panel member for the purpose of working on the dispute, and shall be returned to the Secretariat upon conclusion of the Panel. Copies of Business Confidential information removed from the premises of the WTO by a Panel member shall be stored in a locked receptacle.

IX. Disclosure at a panel meeting

1. A party that wishes to submit Business Confidential information during a Panel meeting may request the Panel to exclude persons who are not approved persons from the meeting. The Panel shall exclude such persons from the meeting for the duration of the submission of such information.

X. Disclosure to third parties

1. Article 10.3 of the DSU provides that "[t]hird parties shall receive the submissions of the parties to the dispute to the first meeting of the panel." Accordingly, disclosure shall be granted to representatives of third parties of Business Confidential information contained in the first submissions of the parties on the premises of the WTO, or on the premises of an embassy or other diplomatic mission of the party submitting the Business Confidential information consistent with Section VIII, paragraph 2. The provisions of these procedures shall apply *mutatis mutandis* to any such disclosure.

XI. Tapes and transcripts

1. Any tapes and transcripts of Panel meetings at which Business Confidential information is uttered shall be treated as Business Confidential information under these procedures.

XII. Return and destruction

1. At the conclusion of the Panel the Secretariat and the parties shall:
 - i) return any printed or binary-encoded Business Confidential information in their possession to the party that submitted such Business Confidential, unless that party agrees otherwise; and
 - ii) destroy all tapes and transcripts of the Panel hearings that contain Business Confidential information, unless the parties mutually agree otherwise.
 2. If the Panel Report is appealed, the Secretariat shall transmit any printed or binary encoded Business Confidential information, plus all tapes and transcripts of the Panel hearings that contain Business Confidential information, to the Appellate Body as part of the record of the Panel proceedings. The Secretariat shall transmit such information to the Appellate Body separately from the rest of the record and shall inform the Appellate Body of the special procedures that the Panel has applied with respect to such Business Confidential information. The parties shall comply with any directive of the Appellate Body regarding disclosure of Business Confidential information to parties or third parties as the Appellate Body may deem appropriate.
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