

## ANNEX A-1

### Request for Consultations by Norway and Addendum

# WORLD TRADE ORGANIZATION

WT/DS337/1  
G/L/766  
G/ADP/D64/1  
22 March 2006  
(06-1287)

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Original: English

### EUROPEAN COMMUNITIES – ANTI-DUMPING MEASURE ON FARMED SALMON FROM NORWAY

#### Request for Consultations by Norway

The following communication, dated 17 March 2006, from the delegation of Norway to the delegation of the European Communities and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

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My authorities have instructed me to request consultations with the European Communities ("EC") pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and Article 17 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("*Anti-Dumping Agreement*") with respect to Council Regulation (EC) No. 85/2006 of 17 January 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of farmed salmon originating in Norway.<sup>1</sup> This measure confirms, and incorporates reasoning from, Commission Regulation (EC) No. 628/2005 of 22 April 2005,<sup>2</sup> as amended by Commission Regulation (EC) No. 1010/2005 of 1 July 2005.<sup>3</sup>

Norway considers that the measure is inconsistent, at least, with the following provisions of the *Anti-Dumping Agreement* and the GATT 1994:

1. Article 5.4 of the *Anti-Dumping Agreement* because the EC initiated the investigation without ensuring that the application for an investigation was "made by or on behalf" of the relevant "domestic industry", as defined in Article 4.1 of that *Agreement*;
2. Article 6.10 of the *Anti-Dumping Agreement* because the EC determined an individual margin of dumping for a selection of producers that neither constituted a statistically valid sample nor represented the largest percentage of the volume of exports from Norway that could reasonably be

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<sup>1</sup> Official Journal of the European Union, L15/1, published 20 January 2006.

<sup>2</sup> Official Journal of the European Union, L104/5, published 23 April 2005.

<sup>3</sup> Official Journal of the European Union, L170/32, published 1 July 2005.

investigated; and because the EC failed to determine an individual margin of dumping for each of the producers included in the defective sample;

3. Articles 2.1 and 2.2 of the *Anti-Dumping Agreement* because the EC examined the sufficiency of domestic sales in the ordinary course of trade on the basis of sub-categories of the like product;

4. Articles 2.1, 2.2 and 2.2.1 of the *Anti-Dumping Agreement* because the EC excluded certain domestic sales as not in the ordinary course of trade by reason of price and/or volume without respecting the conditions in those provisions;

5. Articles 2.1, 2.2 and 2.2.1.1 of the *Anti-Dumping Agreement*, and Article VI:1 of the GATT 1994, because of the EC's failure to determine the normal value for the like product on the basis of the costs of production plus a reasonable amount for administrative, selling and general costs, and for profits;

6. Article 2.2.2 of the *Anti-Dumping Agreement* because the EC rejected actual profits data due to the low volume of domestic market sales of the like product and/or sub-categories of that product; and because the EC substituted an imputed profits margin that is not consistent with the conditions set forth in that provision;

7. Article 6.8 and Annex II of the *Anti-Dumping Agreement* because the EC determined normal value for certain individually examined companies on the basis of facts available without respecting the conditions set forth in those provisions, *inter alia*: failing to inform the relevant companies of the information required; failing to inform them of deficiencies in information provided; and failing to provide them with an opportunity to remedy deficiencies within a reasonable period.

8. Article 6.8 and Annex II, and Article 9.4, of the *Anti-Dumping Agreement* because the EC determined a residual margin of dumping on the basis of facts available for certain companies not individually examined that the EC treated as "non-cooperating";

9. Article 6.8 and Annex II, and Article 9.4, of the *Anti-Dumping Agreement* because the EC determined the weighted average ("all others rate") and the residual margin of dumping for companies not individually examined using margins of dumping previously determined for individually examined companies using facts available;

10. Article 3.1 of the *Anti-Dumping Agreement* and Article VI:1 of the GATT 1994 because the EC failed to make a determination of injury, on the basis of positive evidence, relating to the relevant domestic industry, as defined in Article 4.1 of the *Anti-Dumping Agreement*; and Article 6.10 of that *Agreement*, if applicable to injury determinations, because the EC made a determination of injury solely for selected domestic producers without complying with the conditions in that provision;

11. Articles 3.1 and 3.2 of the *Anti-Dumping Agreement* because the EC failed to make an objective examination, on the basis of positive evidence, of the volume of dumped imports from Norway because the EC treated all imports from Norway as dumped; and of price undercutting by Norwegian imports because of a failure to examine the substantial price premium Scottish and Irish farmed salmon enjoy over Norwegian farmed salmon;

12. Articles 3.1 and 3.4 of the *Anti-Dumping Agreement* because the EC failed to make an objective examination, on the basis of positive evidence, of the factors having a bearing on the state of the domestic industry, including those listed in Article 3.4;

13. Articles 3.1 and 3.5 of the *Anti-Dumping Agreement* because the EC failed to make an objective examination, on the basis of positive evidence, that dumped imports are, through the effects of dumping, causing injury; and because the EC failed to ensure that injury caused to the domestic industry by other factors was not attributed to dumped imports;

14. Articles 9.1, 9.2 and 9.3 of the *Anti-Dumping Agreement*, and Article VI:2 of the GATT 1994, because the EC imposes variable anti-dumping duties by reference to minimum import prices ("MIPs") in an amount that is not limited or related to the margin of dumping; because the MIPs exceed normal value; because the MIPs are determined using a flawed methodology, including incorrect whole fish equivalent conversion factors, excessive amounts for processing costs and profits, and the use of three-year average exchange rates;
15. Articles 9.1, 9.2 and 9.3 of the *Anti-Dumping Agreement*, and Article VI:2 of the GATT 1994, because in certain circumstances the EC imposes variable and fixed anti-dumping duties that exceed the margin of dumping;
16. Article 9.4 of the *Anti-Dumping Agreement* because the EC imposes variable and fixed anti-dumping duties on companies that are not individually examined without respecting the conditions in that provision;
17. Articles 6.2 and 6.4 of the *Anti-Dumping Agreement* because the EC failed to provide timely opportunities for all interested parties to see all non-confidential information relevant to the defense of their interests;
18. Article 6.5.1 of the *Anti-Dumping Agreement* because the EC failed to ensure the provision of summaries of confidential information relating to the domestic industry or, where provided, failed to give summaries in sufficient detail to enable a reasonable understanding of the substance of that information;
19. Articles 6.2 and 6.7, and Annex I, of the *Anti-Dumping Agreement* because the EC failed to respect the procedures for on-the-spot investigations;
20. Articles 6.2 and 6.9 of the *Anti-Dumping Agreement* because the EC failed to inform interested Norwegian parties in timely manner, and in some cases at all, of the essential facts forming the basis for the decision to apply definitive measures, thereby depriving them of the opportunity to defend adequately their interests;
21. Articles 12.2 and 12.2.2 of the *Anti-Dumping Agreement* because the EC failed to set forth, in sufficient detail, the findings and conclusions reached on all issues of fact and law material to the determinations of dumping, injury and causation, as well as to the determination the various MIPs; and
22. In consequence, Articles 1 and 18.1 of the *Anti-Dumping Agreement* because an anti-dumping measure shall be applied only under the circumstances provided for in Article VI of the GATT 1994 and in accordance with the provisions of the *Anti-Dumping Agreement*.

The EC's measure, therefore, nullifies and impairs benefits accruing to Norway under the *Anti-Dumping Agreement* and the GATT 1994.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.

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# WORLD TRADE ORGANIZATION

WT/DS337/1/Add.1  
G/L/766/Add.1  
G/ADP/D64/1/Add.1  
30 March 2006  
(06-1464)

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Original: English

## EUROPEAN COMMUNITIES – ANTI-DUMPING MEASURE ON FARMED SALMON FROM NORWAY

### Request for Consultations by Norway

#### Addendum

The following communication, dated 27 March 2006, from the delegation of Norway to the delegation of the European Communities and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

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On 17 March 2006, Norway requested consultations with the European Communities ("EC") with respect to Council Regulation (EC) No. 85/2006 of 17 January 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of farmed salmon originating in Norway.<sup>1</sup> With respect to this same measure, my authorities have instructed me to clarify the legal basis for Norway's complaint. This clarification supplements, and must be read with, Norway's initial request for consultations.

The EC has determined that farmed Atlantic salmon constitutes a single product, whether or not the farmed salmon consists of whole fish or filleted portions of varying sizes and form. Norway considers that, by virtue of this product determination, the EC's measure is inconsistent, *inter alia*, with the following provisions of the *Anti-Dumping Agreement*:

1. Article 5 of the *Anti-Dumping Agreement*, including Articles 5.1, 5.2, 5.3 and 5.4, because the EC improperly initiated an investigation into a single product that, for purposes of the obligations in this *Agreement*, consists of more than one product;
2. Article 2 of the *Anti-Dumping Agreement*, including Articles 2.1 and 2.6, because the EC made dumping determinations for a single product that, for purposes of the obligations in this *Agreement*, consists of more than one product;
3. Article 3 of the *Anti-Dumping Agreement*, including Articles 3.1, 3.2, 3.4, 3.5 and 3.6, because the EC made an injury determination in relation to the EC domestic industry producing a single product that, for purposes of the obligations in this *Agreement*, consists of more than one product; and,

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<sup>1</sup> WT/DS337/1.

4. Article 9 of the *Anti-Dumping Agreement*, including Articles 9.1, 9.2 and 9.4, because the EC imposed anti-dumping duties on imports of a single product that, for purposes of the obligations in this *Agreement*, consists of more than one product.

Norway wishes to emphasize that the issue of the product scope of the EC's measure is also relevant to several claims that are identified in Norway's initial request for consultations.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.

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## ANNEX A-2

### Request for the Establishment of a Panel by Norway

# WORLD TRADE ORGANIZATION

WT/DS337/2  
30 May 2006

(06-2613)

Original: English

### EUROPEAN COMMUNITIES – ANTI-DUMPING MEASURE ON FARMED SALMON FROM NORWAY

#### Request for the Establishment of a Panel by Norway

The following communication, dated 29 May 2006, from the delegation of Norway to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 17 March 2006, Norway requested consultations with the European Communities ("EC") pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and Article 17 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("*Anti-Dumping Agreement*") with respect to Council Regulation (EC) No. 85/2006 of 17 January 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of farmed salmon originating in Norway.<sup>1</sup> This measure confirms, and incorporates reasoning from, Commission Regulation (EC) No. 628/2005 of 22 April 2005,<sup>2</sup> as amended by Commission Regulation (EC) No. 1010/2005 of 1 July 2005.<sup>3</sup>

On 27 March 2006, Norway supplemented its initial request for consultations with a clarification of the legal basis for the request. The initial and supplemental requests for consultations of 17 March 2006 are to be read together.

Consultations were held on 12 May 2006 with a view to reaching a mutually satisfactory solution. These consultations failed to resolve the dispute.

Therefore, Norway respectfully requests, pursuant to Articles 4 and 6 of the DSU, Article XXIII:2 of the GATT 1994, and Article 17.4 of the *Anti-Dumping Agreement*, that the Dispute Settlement Body (DSB) establish a Panel to examine this matter. Norway asks that a special DSB meeting be held on 9 June 2006 to consider this request. Norway further requests that the Panel have standard terms of reference, as set out in Article 7.1 of the DSU.

<sup>1</sup> Official Journal of the European Union, L15/1, published 20 January 2006.

<sup>2</sup> Official Journal of the European Union, L104/5, published 23 April 2005.

<sup>3</sup> Official Journal of the European Union, L170/32, published 1 July 2005.

Norway considers that the measure is inconsistent with, at least, the obligations of the EC under the following provisions of the *Anti-Dumping Agreement* and, where specified, the GATT 1994:

1. Article 5, including Articles 5.1, 5.2, 5.3 and 5.4, because, by determining that the product under consideration is fresh, chilled or frozen farmed salmon, whether or not filleted, the EC improperly initiated an investigation into a single product that consists of more than one product.
2. Article 5.4 because the EC initiated the investigation without ensuring that the application for an investigation was "made by or on behalf" of the relevant "domestic industry", as defined in Article 4.1 of that *Agreement*.
3. Article 2, including Articles 2.1 and 2.6, because the EC made dumping determinations for a single product (fresh, chilled or frozen farmed salmon, whether or not filleted) that consists of more than one product.
4. Article 6.10 because the EC determined an individual margin of dumping for a selection of producers that neither constituted a statistically valid sample nor represented the largest percentage of the volume of exports from Norway that could reasonably be investigated; and because the EC failed to determine an individual margin of dumping for one of the producers included by the EC in the defective sample.
5. Articles 2.1, 2.2 and 2.2.1 because the EC excluded certain domestic sales as not in the ordinary course of trade by reason of price and/or volume without respecting the conditions in those provisions, in particular the duty to ensure that below-cost sales are rejected solely if prices do not provide for the recovery of all costs within a reasonable period of time.
6. Articles 2.1, 2.2 and 2.2.1.1, and Article VI:1 of the GATT 1994, because the EC failed to determine the normal value for the like product on the basis of each individually examined company's costs of production ("COP") plus a reasonable amount for administrative, selling and general ("SG&A") costs, and for profits, in particular by virtue of improper adjustments to the COP and SG&A costs reported by individually examined companies. The Commission also made clerical errors in its calculations of constructed normal value.
7. Article 2.2.2 because the EC rejected actual data pertaining to production and sales in determining amounts for profits and SG&A costs due to the low volume of domestic market sales of the like product and/or sub-categories of that product.
8. Article 6.8 and paragraphs 1, 3, 5, 6 and 7 of Annex II because the EC determined normal value for certain individually examined companies, in part, on the basis of facts available. In so doing, the EC failed to respect the conditions set forth in these provisions governing the use of facts available. In particular, the EC: failed to inform the relevant companies of the information required; failed to use verifiable information submitted in timely manner, even though this would not have presented undue difficulties; failed to inform them of the reasons for the rejection of information submitted; failed to provide them with an opportunity to provide further explanations within a reasonable period; failed to state, in the published determinations, reasons for rejection of the evidence and information submitted by these individual companies; and failed to take into account information submitted.
9. Article 6.8 and paragraph 1 of Annex II, and Article 9.4, by improperly applying facts available in establishing the "residual" margin of dumping that was assigned to producers and exporters that were not individually examined.

10. Article 3, including Articles 3.1, 3.2, 3.4, 3.5 and 3.6, because the EC's injury determination is made in relation to an EC domestic industry producing a single product (fresh, chilled or frozen farmed salmon, whether or not filleted) that consists of more than one product. By failing to determine the product under consideration properly, the EC failed to examine and make an injury determination with respect to the separate EC domestic industries producing the like products.
11. Articles 3.1, 3.4 and 3.5 and Article VI:1 of the GATT 1994 because the EC failed to make a determination of injury for the relevant domestic industry, as defined in Article 4.1 of the *Anti-Dumping Agreement*. This claim has several components:
  - (a) The EC limited the EC domestic industry to certain producers of farmed salmon that cooperated fully in the investigation and that supported the complaint. The EC improperly excluded from the EC domestic industry unrelated allegedly non-cooperating producers and unrelated non-supporting producers.
  - (b) The EC examined injury to the EC domestic industry in relation to a sample of 5 EC growers of farmed salmon that did not constitute the EC producers as a whole of the like product, or a majority of them. In so doing, the EC violated Article 6.10 of the *Agreement*, if applicable to injury determinations, because the EC made a determination of injury solely for selected domestic producers without complying with the conditions in that provision.
  - (c) The EC failed to include EC producers as a whole of filleted products, or a major proportion of them, in the EC domestic industry.
12. Articles 3.1 and 3.2 because the EC failed to make an objective examination, on the basis of positive evidence, of price undercutting by Norwegian imports because of a failure to examine the substantial price premium enjoyed by Scottish and Irish farmed salmon over Norwegian farmed salmon.
13. Articles 3.1 and 3.4 because the EC failed to make an objective examination, on the basis of positive evidence, of the factors having a bearing on the state of the domestic industry, including those listed in Article 3.4.
14. Articles 3.1 and 3.5 because the EC failed to make an objective examination, on the basis of positive evidence, that dumped imports are, through the effects of dumping, causing injury; and because the EC failed to ensure that injury caused to the domestic industry by other factors was not attributed to dumped imports.
15. Article 9, including Articles 9.1, 9.2 and 9.4, because the EC failed to impose anti-dumping duties on imports of a single product and instead imposed remedies at six different levels on different products.
16. Articles 9.1, 9.2 and 9.3, and Article VI:2 of the GATT 1994, because the EC imposes variable anti-dumping duties by reference to minimum import prices ("MIPs") in an amount that is not limited by the margin of dumping determined for individually examined companies; because the MIPs exceed the normal value determined for individually examined companies; and because the MIPs are determined using a flawed methodology.
17. Articles 9.1, 9.2 and 9.3, and Article VI:2 of the GATT 1994, because in certain circumstances the EC imposes variable and fixed anti-dumping duties that exceed the margin of dumping determined for individually examined companies.

18. Article 9.4 because the EC established a weighted average margin of dumping for cooperating companies that were not individually examined using margins of dumping previously determined for certain individually examined companies using facts available. The EC's weighted average margin of dumping is also tainted by calculation errors.
19. Articles 6.2 and 6.4 because the EC failed to provide timely opportunities, and in some cases any opportunity, for interested parties to see non-confidential information.
20. Article 6.5.1 because the EC failed to ensure the provision of non-confidential summaries of confidential information relating to the domestic industry or, where provided, failed to give summaries in sufficient detail to enable a reasonable understanding of that information.
21. Articles 6.2 and 6.7, and paragraph 7 of Annex I, because the EC failed to respect the procedures for on-the-spot investigations, in particular, it failed to inform companies of further verifiable information that was needed.
22. Articles 6.2 and 6.9 because the EC failed to inform interested Norwegian parties in timely manner, and in some cases at all, of the essential facts forming the basis for the decision to apply definitive measures, thereby depriving them of the opportunity to defend adequately their interests.
23. Articles 12.2 and 12.2.2 because the EC failed to set forth, in sufficient detail, the findings and conclusions reached on all issues of fact and law material to the determinations of dumping, injury and causation, as well as to the determination of the various MIPs.

The EC's measure, therefore, nullifies and impairs benefits accruing to Norway under the *Anti-Dumping Agreement* and the GATT 1994.

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## **ANNEX A-3**

### **Working Procedures for the Panel**

1. In its proceedings the Panel shall follow the relevant provisions of the Dispute Settlement Understanding (DSU). In addition, the following working procedures shall apply.
2. The panel shall meet in closed session. The parties to the dispute, and interested third parties, shall be present at the meetings only when invited by the Panel to appear before it.
3. The deliberations of the Panel and the documents submitted to it shall be kept confidential. Nothing in the DSU shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the Panel which that Member has designated as confidential. Where a party to a dispute submits a confidential version of its written submissions to the Panel, it shall also, upon request of a Member, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.
4. The Panel may adopt special procedures for the protection of certain confidential information as an annex to these working procedures, following consultation with and opportunity for comment by the parties on any proposed procedures.
5. Before the first substantive meeting of the Panel with the parties, the parties to the dispute shall transmit to the Panel written submissions in which they present the facts of the case and their arguments.
6. At its first substantive meeting with the parties, the Panel shall ask Norway to present its case. Subsequently, and still at the same meeting, the European Communities will be asked to present its point of view.
7. All third parties which have notified their interest in the dispute to the Dispute Settlement Body shall be invited in writing to present their views during a session of the first substantive meeting of the Panel set aside for that purpose. All such third parties may be present during the entirety of this session.
8. Formal rebuttals shall be made at a second substantive meeting of the parties. The European Communities shall have the right to take the floor first, to be followed by Norway. The parties shall submit, prior to that meeting, written rebuttals to the panel.
9. The Panel may at any time put questions to the parties and to the third parties and ask them for explanations either in the course of the substantive meeting or in writing. Answers to questions shall be submitted in writing by the date(s) specified by the Panel.
10. The parties to the dispute and any third party invited to present its views shall make available to the Panel and the other party or parties a written version of their oral statements, preferably at the end of the meeting, and in any event not later than the day following the meeting. Parties and third parties are encouraged to provide the Panel and other participants in the meeting with a provisional written version of their oral statements at the time the oral statement is presented.
11. In the interest of full transparency, the presentations, rebuttals and statements shall be made in the presence of the parties. Moreover, each party's written submissions, including responses to questions put by the Panel, shall be made available to the other party or parties.
12. The parties shall endeavour to provide the Secretariat with executive summaries of the claims and arguments contained in their written submissions and oral presentations. These executive summaries will be used by the Secretariat only for the purpose of assisting the Secretariat in drafting a

concise arguments section of the Panel report so as to facilitate timely translation and circulation of the Panel report to the Members. They shall not serve in any way as a substitute for the submissions of the parties. The summaries of the first written submission and rebuttal written submission shall be limited to 10 pages each, and the summaries of the oral statements at the meetings will be limited to 5 pages each. The Panel will determine a page limit for executive summaries of parties' responses to questions, if necessary and as appropriate. Third parties are requested to provide the Panel with executive summaries of their written submissions and oral presentations, of no more than 5 pages each. The executive summaries shall be submitted to the Secretariat, preferably within ten days of the original submission or oral statement concerned. Paragraph 18 shall apply to the service of executive summaries.

13. A party shall submit any request for a preliminary ruling not later than its first submission to the Panel. If Norway requests such a ruling, the European Communities shall submit its response to the request at a time to be determined by the Panel in light of the request. If the European Communities requests such a ruling, Norway shall submit its response to the request prior to the first substantive meeting of the Panel, at a time to be determined by the Panel in light of the request. Exceptions to this procedure will be granted upon a showing of good cause.

14. Each party shall submit all factual evidence to the Panel no later than during the first substantive meeting, except for evidence necessary for purposes of rebuttals or answers to questions. Exceptions to this procedure will be granted upon a showing of good cause. The other party shall be accorded a period of time for comment, as appropriate, on any new factual evidence submitted after the first substantive meeting.

15. To facilitate the maintenance of the record of the dispute, and to maximize the clarity of submissions, in particular the references to exhibits submitted by parties, parties shall sequentially number their exhibits throughout the course of the dispute. For example, exhibits submitted by Norway could be numbered NOR-1, NOR -2, etc. If the last exhibit in connection with the first submission was numbered NOR -5, the first exhibit of the next submission thus would be numbered NOR -6. The parties are encouraged to submit exhibits in electronic format, *i.e.*, on a CD-ROM, if possible.

16. The parties and third parties to this proceeding have the right to determine the composition of their own delegations. The parties and third parties shall have responsibility for all members of their delegations and shall ensure that all members of the delegation act in accordance with the rules of the DSU and the Working Procedures of this Panel, particularly in regard to confidentiality of the proceedings. Each party and third party shall provide a list of the members of its delegation before or at the beginning of the substantive meetings with the Panel.

17. Following issuance of the interim report, the parties shall have two weeks to submit written requests to review precise aspects of the interim report and to request a further meeting with the Panel. The right to request such a meeting must be exercised at that time. Following receipt of any written requests for review, if no further meeting with the Panel is requested, each party shall have one week to submit written comments on the other party's written request for review. Such comments shall be strictly limited to comments on the other party's written request for review.

18. The following procedures regarding service of documents shall apply:

- (a) Each party shall serve its submissions directly on the other party. Each party shall, in addition, serve its first written submission on all third parties. Each third party shall serve its submissions on the parties and all other third parties. Each party and third party shall confirm, in writing, that copies have been served as required at the time it provides each submission to the Panel.

- (b) The parties and third parties shall provide their submissions to the Secretariat by 5:30 p.m. on the due dates established by the Panel, unless a different time is set by the Panel.
  - (c) The parties and third parties shall provide the Panel with eight (8) paper copies of their submissions. All of these copies shall be filed with the Dispute Settlement Registrar, Mr. Ferdinand Ferranco (office number 3154).
  - (d) At the time that they provide the paper versions of their submissions, the parties and third parties shall also provide to the Panel electronic versions of all submissions, in a format compatible with that used by the Secretariat, either on a CD-ROM or diskette or as an e-mail attachment. E-mail attachments shall be sent to the Dispute Settlement Registry (DSRegistry@wto.org) with copies to Mr. Andrea Mastromatteo (andrea.mastromatteo@wto.org) and Ms. Judith Czako (judith.czako@wto.org).
  - (e) The Panel will endeavour to provide the parties with an electronic version of the descriptive part, the interim report and the final report, as well as of other documents as appropriate. When the Panel transmits to the parties or third parties both paper and electronic versions of a document, the paper version shall constitute the official version for the purposes of the record of the dispute.
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## ANNEX A-4

### **Additional Working Procedures of the Panel Concerning Business Confidential Information**

The following procedures apply to all business confidential information (BCI) submitted in the course of the Panel process.

19. Any information that was treated as confidential in the course of the EC's anti-dumping investigation (AD 487) at issue in the Panel process, and that is not otherwise available in the public domain, shall be submitted as BCI in this Panel process, unless the person that provided the information in the course of the EC's anti-dumping investigation (AD 487) agrees otherwise.

20. Employees of the European Communities, of the Governments of EC Member-states, and of the Government of Norway, may have access to BCI submitted in this Panel process. Parties may give access to BCI to outside advisors acting on behalf of the Party in this Panel process, provided that the Parties shall provide the Secretariat, and the other Party, with a list of the names and affiliation of such outside advisors. In no circumstances shall an employee, officer or agent of an enterprise engaged in the production, export or import of the products concerned in this dispute be given access to BCI (except BCI of the enterprise in question).

21. Employees of the Secretariat and Panel Members may have access to BCI submitted in this proceeding.

22. Third Parties to this Panel process shall receive non-confidential versions of the first submissions of the Parties to the Panel. Employees of the Governments of Canada; China; Hong Kong, China; Japan; Korea and the United States, and outside advisors under the terms set forth in paragraph 2, may request access to BCI contained in the first submissions of the Parties to the Panel for the purpose of participating effectively in the Panel proceeding. The Panel shall decide whether to grant access to such BCI in consultation with the Parties. In the absence of a showing of good cause, any such Third Party access to BCI will take place on the premises of the WTO Secretariat. Third Parties shall be entitled to review, but not to copy, the BCI accessed on the premises of the WTO Secretariat. Third Parties granted access to BCI through this paragraph will be given an additional period, if needed, to allow them to comment on BCI.

23. A Party or Third Party submitting BCI in any written submission (including in any exhibits) shall mark the cover and/or first page of the document containing any such information with the words "Contains Business Confidential Information". The specific information in question shall be enclosed in double brackets, as follows: [[xx.xxx.xx]] and the notation "Contains Business Confidential Information" shall be marked at the top of each page containing the BCI. A non-confidential version, clearly marked as such, of any written submission (including any exhibits) containing BCI, shall be submitted to the Panel within three working days after the submission of the confidential version containing the BCI. In the case of an oral statement containing BCI, the Party or Third Party making such a statement shall inform the Panel before making it that the statement will contain BCI, and the Panel will ensure that only persons authorized to have access to BCI pursuant to these procedures are in the room to hear that statement. A written non-confidential version of an oral statement containing BCI shall be submitted within a day after the statement has been made. Non-confidential versions of both oral and written statements shall be redacted in such a manner as to convey a reasonable understanding of the substance of the BCI deleted therefrom.

24. Any BCI information that is submitted in binary-encoded form shall be clearly marked with the statement "Business Confidential Information" on a label on the storage medium, and clearly marked with the statement "Business Confidential Information" in the binary-encoded files.

25. As required by Article 18.2 of the DSU, a Party or Third party having access to BCI submitted in this Panel process shall treat it as confidential and shall not disclose that information other than to those persons authorized to receive it pursuant to these procedures. Any information submitted as BCI under these procedures shall only be used for the purposes of this dispute and for no other purpose. Each Party and Third Party is responsible for ensuring that its employees and/or outside advisors comply with these procedures to protect BCI.

26. The Panel engages not to disclose in its Report any information designated as BCI under these procedures. The Panel may, however, make statements of conclusion based on such information.

27. After the conclusion of the Panel process, and within a period fixed by the Panel, each Party shall return all documents in its possession submitted as BCI in the Panel process to the Party that originally submitted the BCI. Alternatively, a Party may certify in writing to the other Party that all such documents have been destroyed. This obligation is without prejudice to the confidential information separately obtained by the EC and stored in its own record of the anti-dumping investigation (AD 487) at issue in the Panel process. The Secretariat may retain one copy of the documents containing the BCI for the archives of the WTO.

28. Submissions containing information designated as BCI under these procedures will be included in the record forwarded to the Appellate Body in the event of any appeal of the Panel's Report.

29. At the request of a Party, the Panel may apply these procedures or an amended form of these procedures, to protect information that does not fall within the scope of the information set out in paragraph 1.

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