

ANNEX E

PROCEDURES FOR THE PROTECTION OF BUSINESS CONFIDENTIAL INFORMATION

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PROCEDURES FOR THE PROTECTION OF BUSINESS CONFIDENTIAL INFORMATION

(7 April 2009)

UNITED STATES – DEFINITIVE ANTI-DUMPING AND COUNTERVAILING DUTIES ON CERTAIN PRODUCTS FROM CHINA

(DS379)

Additional Working Procedures of the Panel Concerning Business Confidential Information

1. These procedures apply to any business confidential information ("BCI"), defined as information previously submitted to the U.S. Department of Commerce as confidential information protected by Administrative Protective Order in the course of the anti-dumping and countervailing duty investigations at issue (investigation nos. A-570-910, C-570-911, A-570-912, C-570-913, A-570-914, C-570-915, A-570-916 and C-570-917), that a party wishes to submit to the Panel. However, these procedures do not apply to information that is available in the public domain. In addition, these procedures do not apply to any such BCI if the person who provided the information in the course of the aforementioned investigations agrees in writing to make the information publicly available.
2. The first time that a party submits to the Panel BCI as defined above from an entity that submitted that information in any of the investigations cited in paragraph 1, the Panel requests that party also to provide, with a copy to the other party, an authorizing letter from the entity. That letter shall authorize both the United States and China to submit in this dispute, in accordance with these procedures, any confidential information submitted by that entity in the course of those investigations.
3. If an entity refuses to grant the authorization referred to in paragraph 2, a party may bring the situation to the attention of the Panel. The Panel shall consider what steps to take, which may include requesting information pursuant to Article 13 of the DSU.
4. No person may have access to BCI except a member of the Secretariat or the Panel, an employee of a party or third party, and an outside advisor for the purposes of this dispute to a party or third party. However, an outside advisor is not permitted access to BCI if that advisor is an officer or employee of an enterprise engaged in the production, export, or import of the products that were the subject of the investigations cited in paragraph 1.
5. A party or third party having access to BCI shall treat it as confidential, i.e., shall not disclose that information other than to those persons authorized to receive it pursuant to these procedures. Each party and third party shall have responsibility in this regard for its employees as well as any outside advisors used for the purposes of this dispute. BCI obtained under these procedures may be used only for the purpose of providing information and argumentation in this dispute and for no other purpose.
6. Any party or third party submitting or referring to BCI in any document, including written submissions and oral statements, shall mark the cover page and each page of such document with the

notice "Contains Business Confidential Information" at the top of the page. The specific information in question shall be placed between double brackets, as follows: [[xx,xxx.xx]].

7. In the case of an oral statement containing BCI, the party or third party making such a statement shall inform the Panel in advance that the statement will contain BCI, and the Panel shall ensure that only persons authorized to have access to BCI pursuant to these procedures are in the room to hear that statement.

8. The Panel shall not disclose BCI, in its report or in any other way, to persons not authorized under these procedures to have access to BCI. The Panel may, however, make statements of conclusion drawn from such information.

9. Submissions containing BCI will be included in the record forwarded to the Appellate Body in the event of an appeal of the Panel's Report.
