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Negotiating Group on Rules

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**TRANSPARENCY IN ANTI-DUMPING AND COUNTERVAILING DUTY  
PROCEEDINGS: THE ISSUE OF CONFIDENTIALITY**

MINISTERIAL DECISION OF XX DECEMBER 2015

*Proposal by the Russian Federation*

The following communication, dated 12 November 2015, is being circulated at the request of the Delegation of the Russian Federation.

Ministers,

*Having regard* to the 2001 Doha Declaration, where we agreed to negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures.

*Acknowledging* the importance of enhancing transparency of anti-dumping and countervailing duty proceedings while preserving their predictability for parties to such proceedings, as well as for the authorities.

*Recognizing* the case for further clarification of the provisions of the Agreements on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures with a view to finding a balance between the need to protect confidential information and ensuring transparency in reaching decisions, while providing a timely and adequate opportunity for interested parties to defend their interests.

In the light of experience and of the increasing application of these instruments by Members, we accordingly:

*Agree* to develop requirements for the content and format of the non-confidential summary that would permit a reasonable understanding of the substance of information submitted in confidence in anti-dumping and countervailing investigations.

*Direct* the Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures to draw up the above-mentioned requirements with a view for their adoption by the General Council within twelve months.

*Agree*, before such requirements are adopted, in the implementation of the relevant requirements of the Agreements, to adhere, to the extent possible, to the Guidelines for the Provision of Confidential Information and Non-Confidential Summaries thereof in Anti-Dumping and Countervailing Duty Proceedings contained in the Annex to this document.

**ANNEX****GUIDELINES FOR THE PROVISION OF CONFIDENTIAL INFORMATION AND NON-CONFIDENTIAL SUMMARIES THEREOF IN ANTI-DUMPING AND COUNTERVAILING DUTY PROCEEDINGS****A. Types of confidential information**

- (i) The following types of information can be treated by competent authorities as confidential:
- information which is by nature confidential;
  - information which is expressly protected from public disclosure by the domestic legislation of an importing Member;
  - business or trade secrets;
  - the following factual data:
    - production costs;
    - terms of sales;
    - prices of individual transactions (but not price components, dates or product description);
    - names of particular customers, distributors, suppliers (but not the destination of sales) or name of a person from whom the confidential information was received;
    - amount of dumping on individual sales or amount of benefit received by a person/entity;
  - any other information the disclosure of which would be of significant competitive advantage to a competitor or would cause a significantly adverse effect upon the person supplying the information or upon the person from whom that person acquired the information.
- (ii) The following types of information cannot be treated by competent authorities as confidential:
- information that is publicly available, including laws, regulations, decrees or other official documents pertaining to a Member's domestic legal framework;
  - aggregated information (e.g. sales, production etc.) pertaining collectively to more than two companies which submitted confidential information, unless, as a rule, these two companies account for more than 80 per cent of the data in question or unless one company accounts for more than 60 per cent of the data in question;
  - factual information that is not designated as confidential information;
  - written arguments relating to the investigation that are not designated as confidential information.

**B. "Good cause" requirement**

Information of the types listed in Part A(i) of these guidelines can be treated as confidential by competent authorities only upon "good cause" shown in writing.

The statement of "good cause" should be provided by the interested party submitting the confidential information along with the information for which it requests confidential treatment and should refer to all items that should be treated as confidential by the competent authority.

The requirement to show "good cause" shall be fulfilled when the disclosure of information:

- would be of significant competitive advantage to a competitor of a party submitting the information;
- would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information;
- would cause substantial harm to the competitive position of the submitter;
- could provide specific business information to the competitor that could be replicated, to the detriment of the submitter's competitive position.

### C. Non-confidential summaries

1. Non-confidential versions of documents shall be created from documents containing the information for which confidential treatment is requested. Such versions shall contain non-confidential summaries of information submitted in confidence. As closely as possible, their appearance should mirror the original confidential documents.
2. Confidential information should be deleted from the original document item by item and replaced with a summary that ensures an understanding of substance of the information that was deleted. It is preferable to indicate where confidential information has been deleted.
3. Information, which is not treated as confidential should be identically displayed in a confidential and non-confidential version of the submitted document.
4. When confidential information concerns figures (e.g. in tables), indices or year-over-year changes in percentage terms, *inter alia*, can be used to ensure an understanding of substance of the confidential information that they replace.

*Example of information intended to be not disclosed:*

Volume of production

	Year 1	Year 2	Year 3
Volume of production	20,000 tonnes	30,000 tonnes	40,000 tonnes

*Non-confidential summaries could be as follows:*

Volume of production (index)

	Year 1	Year 2	Year 3
Volume of production	100	150	200

or:

Volume of production (Year-over-year changes in percentage terms)

	Year 1	Year 2	Year 3
Volume of production	-	+50%	+33%

If the confidential information is presented in tables, the interested party can provide trend lines or text summarizing the substance of data not disclosed.

5. When the information concerns a single number, a percentage change, *inter alia*, can be applied to it to withhold the original number from public disclosure.

*Example of information intended to be not disclosed:*

"The cost of production is 200 per tonne."

*Non confidential summaries could be as follows:*

"The cost of production is 220 per tonne" (with the addition of a footnote saying: "actual numbers have been amended by a margin of maximum + 10% to protect confidentiality").

- When confidential information is provided in the form of text, it can, *inter alia*, be summarized, certain elements can be substituted with more general terms.

*Example:* "TRADING COMPANY told me that the prices of imports were 20% lower".

*Non confidential summaries could be as follows:*

"One of my customers told me that the prices of imports were 20% lower".

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