

***UKRAINE – DEFINITIVE SAFEGUARD MEASURES  
ON CERTAIN PASSENGER CARS***

**(WT/DS468)**

**THIRD PARTY ORAL STATEMENT OF THE UNITED STATES OF AMERICA  
AT THE FIRST SUBSTANTIVE MEETING  
OF THE PANEL WITH THE PARTIES**

**September 30, 2014**

1. Mr. Chairman and members of the Panel: thank you for the opportunity to appear before you today to present the views of the United States as a third party in these proceedings. The written submission of the United States addressed a number of important issues raised by the submissions of the parties to this dispute, and we will not repeat those points here. Today, the United States will address the Business Confidential Information, or BCI, procedures, which the European Union raised in its third party written submission.
2. The European Union suggests that BCI procedures should be substantially similar across disputes arising under the Anti-Dumping Agreement, the SCM Agreement, and the Agreement on Safeguards.<sup>1</sup> The United States considers that these panel proceedings are not an appropriate forum for pursuing such an objective. Any systemic solution of the type envisioned by the EU should be sought through the WTO bodies designed to solicit and reflect the views of all WTO Members.
3. The EU also addresses, in particular, paragraph 1, sentence 3 of this Panel’s BCI procedures, which provides that “BCI shall include information that was previously submitted to the investigating authorities of Ukraine...as BCI in the safeguard investigation at issue in this dispute.” The EU objects based, in part, on its understanding that information submitted in the underlying safeguard investigation must be treated as BCI if the submitter requested BCI designation, regardless of whether the investigating authority granted such treatment.<sup>2</sup> If that interpretation of the BCI procedures were correct, the United States would agree that information not treated as BCI in the underlying investigation need not automatically be treated as BCI in this dispute by virtue of the submitter’s request. Rather, the critical point is whether the competent authorities treated the information as BCI, either because they accepted the submitter’s designation or because they resolved a challenge in favor of confidentiality. If that is the case, a panel should, in the first instance, follow the designations of the competent authorities.
4. Accordingly, the United States considers that paragraph 1, sentence 3 of the BCI procedures could be clarified by substituting the words “treated by” for the words “submitted to” so that it reads, in relevant part: “BCI shall include information that was previously treated by the investigating authorities of Ukraine...as BCI in the safeguard investigation at issue in this dispute.”
5. This concludes our statement. Thank you again for this opportunity to express our views. We will attempt to assist the Panel by responding to any questions the Panel has for third parties, including any questions regarding our written submission or this statement.

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<sup>1</sup> EU Third Party Written Submission, para. 5.

<sup>2</sup> EU Third Party Written Submission, para. 7.