

**STATEMENT ON A MECHANISM FOR DEVELOPING, DOCUMENTING AND SHARING
PRACTICES AND PROCEDURES IN THE CONDUCT OF WTO DISPUTES**

Addendum

The following communication, dated 7 December 2020, is being circulated at the request of the Delegation of Canada.

**PRACTICES CONCERNING THE USE OF FLEXIBLE ARRANGEMENTS IN DISPUTE
SETTLEMENT PROCEEDINGS DURING THE COVID-19 PANDEMIC**

Desiring to safeguard the right of WTO Members to the prompt settlement of disputes, which is essential to the effective functioning of the WTO;

Considering the ongoing restrictions on international travel due to the COVID-19 pandemic and the additional precautions that are necessary to protect people's health and safety;

Acknowledging the importance of the principle of due process to the fair and orderly settlement of disputes;

Acknowledging that the time at which panels will be in a position to hold fully in-person meetings with the parties is currently unknown;

Recognizing the existence of information and communications technology that enables efficient remote work and notably the holding of meetings with remote participation;

Recalling that Article 12.1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("Dispute Settlement Understanding") provides panels with the discretion to adopt working procedures in individual disputes after consulting with the parties, and that Article 12.2 of the Dispute Settlement Understanding states that panel procedures should provide sufficient flexibility so as to ensure high-quality panel reports, while not unduly delaying the panel process;

Recognizing that, due to the COVID-19 pandemic, the principle of prompt settlement of disputes may require panels to adopt flexible arrangements, such as provisions for virtual or hybrid (virtual and in-person) hearings, at the request of the parties or, if necessary, on their own initiative, as illustrated by the decisions taken by several panels;

Recognizing that flexible arrangements in the conduct of dispute settlement proceedings, as outlined below, are meant to be of a temporary nature and would apply during the COVID-19 pandemic;

In view of these considerations, endorsing Members indicate their intention to:

1. Cooperate with the other party or parties in a dispute with a view to jointly requesting the panel to adopt flexible arrangements, including recourse to virtual or hybrid hearings, to ensure that disputes can progress in a timely manner during the COVID-19 pandemic;

2. Cooperate with the panel and the other party or parties, when considering flexible arrangements, to ensure that each dispute's unique context and factors are taken into consideration in order to preserve the parties' due process rights, including the ability of the parties to properly present argument and evidence, as well as the rights of the third parties in the dispute;
3. Take into consideration approaches that have been adopted by other WTO panels, or other domestic and international dispute settlement bodies, in particular with respect to technological capacity, procedural fairness, information security, and confidentiality;
4. Cooperate with the panel and the other party or parties to facilitate, in relation to virtual or hybrid hearings, a level of participation by panellists, parties, and third parties, as close as technically feasible to that of in-person hearings. For instance, the procedures should enable parties to deliver oral statements and, to the extent possible, to engage in substantive discussions with the panel, one another, and third parties;
5. Consider favourably reasonable adjustments to procedures that may be desirable to ensure procedural fairness; and
6. Cooperate with the panel and the other party or parties to ensure that confidentiality requirements, including the confidentiality of the proceedings, as provided for in the Dispute Settlement Understanding and in relevant panel working procedures, be observed.
