WORLD TRADE ORGANIZATION

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Working Group on the Relationship between Trade and Investment

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COMMUNICATION FROM CANADA

The following communication, dated 13 September 2002, has been received from the Permanent Mission of Canada.

CONSULTATION AND DISPUTE SETTLEMENT

1. Canada's consideration of the elements identified by Ministers in Doha has been informed by the fact that any prospective multilateral framework on investment would coexist and interact with other WTO agreements. Indeed, Canada believes that a WTO framework on investment should ensure a high degree of coherence or complementarity among the various WTO agreements that include investment-related provisions. Such an approach does not prejudge the potential architecture, scope or disciplines of a multilateral framework; complementarity may be reached by a number of avenues. It does argue, however, against the adoption of principles or instruments that may, at this time, be incompatible with the existing WTO architecture.

2. In paragraph 10 of its paper on "Consultation and the Settlement of Disputes Between Members", the WTO Secretariat notes that the WTO Dispute Settlement Understanding applies to the "'covered agreements' defined to include the Agreement Establishing the WTO and the multilateral and plurilateral trade agreements set out in Appendix 1 of the DSU, although under some agreements special rules and procedures are applicable (Appendix 2)." Therefore, to the extent that existing WTO agreements, such as the GATS and the TRIMS, include investment-related provisions, the WTO provisions on dispute settlement are already applicable to investment.

3. This would seem to suggest, first, that the DSU should also be applicable to any prospective framework on investment and, second, that it would be inappropriate to provide for an alternative dispute settlement mechanism, such as an investor-state dispute settlement option, that would, in all likelihood, be applicable only to the obligations and commitments contained in a multilateral framework on investment. The latter contingency would mean that the provisions of a potential multilateral framework on investment could be governed by fundamentally different dispute settlement provisions than investment-related provisions under other WTO agreements, such as the GATS, the TRIPs and the TRIMs. Under this scenario, an arbitrary and artificial distinction would be drawn between services- and manufacturing-related investment, for example, which would not reflect the reality of investment activity.

4. There are other arguments in favour of relying on the existing dispute settlement mechanism under the DSU, not least of which is that the WTO was designed to establish rights and obligations for Members, not private parties. In addition, Members have considerable familiarity and experience with the DSU. Finally, as the Secretariat points out, the DSU includes a number of provisions on

special and differential treatment for developing and least-developed countries, including the provision of technical assistance to developing countries involved in a dispute.

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