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CANADA – MEASURES CONCERNING TRADE IN COMMERCIAL AIRCRAFT

COMMUNICATION FROM CANADA

The following communication, dated 24 October 2017, from the delegation of Canada to the Annex V Facilitator and to the Chairperson of the Dispute Settlement Body, is circulated at the request of that delegation.

Today, Canada requested that the Panel in the dispute *Canada – Measures Concerning Trade in Commercial Aircraft* (DS522) find that certain aspects of Brazil's request for the establishment of a panel do not meet the requirements of Article 6.2 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU). As a result, Canada requested that the Panel find that certain measures and Brazil's claims with regard to serious prejudice under Articles 5(c), 6.3, 6.4 and 6.5 of the *Agreement on Subsidies and Countervailing Measures* are outside of the Panel's terms of reference.

The Panel's decision on Canada's request will have a fundamental impact on the scope of these proceedings. Notably, if the Panel determines that Brazil's Panel Request does not contain valid serious prejudice claims, an Annex V process would be unwarranted. Canada should not be required to participate in a time-consuming, resource-intensive and costly Annex V process with regard to measures and legal claims that are not properly within the Panel's terms of reference.

Given the nature and potential implications of Canada's request under Article 6.2 of the DSU, the Annex V process should not proceed until the Panel has made a preliminary ruling on Canada's request. Canada has filed its request now, that is prior to the gathering of information under the Annex V process so that the Panel may address the issues raised by Canada in the most efficient manner for the whole proceeding.
