

**IMPROVING THE SPECIAL AND DIFFERENTIAL PROVISIONS
IN THE DISPUTE SETTLEMENT UNDERSTANDING**

Communication from China

The following communication, dated 6 January 2003, has been received from the Permanent Mission of the People's Republic of China.

As one of the pillars of the multilateral trading system, the WTO Dispute Settlement Mechanism has been operating smoothly since the establishment of the WTO, which shows that its basic framework is a success. Nevertheless, the proceedings and findings of previous cases reflect that the Dispute Settlement Understanding (DSU) needs further improvements and clarifications. The development of the multilateral trade rules, particularly the future results of the negotiations under the Doha Development Agenda requires further improvement of this mechanism. As one of the largest trading nations and a constructive Member of this Organization, China wishes to play a positive role in the formulation of multilateral trade rules, including rules concerning dispute settlement mechanism and believes that the results of the negotiations should reflect the interests of the vast majority of the membership, in particular the interests of developing-country Members.

1. Establishing explicit Special and Differential (S&D) provisions applicable to all developing-country Members

1. China holds that there is still room for improvement with regard to the S&D provisions in the DSU applicable to developing-country Members. In particular, the current DSU lacks general and horizontal provisions applicable to all developing-country Members, which is different from other WTO agreements.

2. In this connection, China proposes that explicit provisions applicable to all developing-country Members be established in the DSU in order to strengthen the S&D provisions to developing-country Members. The subject matters of such provisions may include:

- (a) Developed-country Members shall exercise due restraint in cases against developing-country Members. For instance, developed-country Members shall not bring more than two cases to the WTO Dispute Settlement Body against a particular developing-country Member within a calendar year.
- (b) Where a developed-country Member brings a case against a developing-country Member, if the final rulings of a panel or the Appellate Body show that a developing-country Member does not violate its obligations under the WTO Agreements, the

legal costs of the developing-country Member shall be borne by the developed-country Member initiating the dispute settlement proceedings.

- (c) Developed-country Members shall help developing-country Members participate in the dispute settlement mechanism in a more effective way through providing technical assistance and capacity building programmes.

3. In addition, the operation of some seemingly fair rules in the DSU results in *de facto* discrimination against developing-country Members due to the economic imbalance and discrepancy in the capacity for participation between the developed and developing-country Members. Solutions need to be found to rectify this situation.

4. China also proposes that the existing S&D provisions in the DSU be strengthened and made more effective. Meanwhile, as a general S&D treatment, any rules agreed upon in the negotiations concerning tightened rules shall not apply to developing-country Members as appropriate.

2. Implementation of recommendations of the panel or the Appellate Body

5. China holds that the improvement of the current DSU should facilitate the parties to a dispute to find mutually acceptable solutions so as to fully honour the obligations under the WTO Agreements and implement the recommendations of the panel or the Appellate Body, rather than to encourage the parties to resort to suspension of concessions, which could only double the injury to international trade.

6. Meanwhile it is worth noticing that, with the improvement of the rules and procedures for retaliation, the rules for voluntary compensation still need further development. Due to the imbalance of economic strength and current situation of international trade flows, in cases a developed-country Member chooses to refuse or fails to fully comply with the recommendations of the panel or the Appellate Body, a developing-country Member will be in an embarrassing situation of being short of necessary means for retaliation, although it has been granted the authority to suspend its concessions.

7. In this regard, China holds that specific rules need to be established to address this situation. Some Members have proposed cash compensation, which China believes to be a development of voluntary compensation particularly for small developing-country Members. China supports developing-country Members' right to request developed-country Members to make cash compensations in case of the latter's failure of compliance.

3. Shortening the time -frame of dispute settlement

8. China supports to shorten the time-frame of dispute settlement on the condition that the integrity of the fundamental principles of the dispute settlement mechanism remains unaffected. In particular, taking into account the recent tendency of abusing trade remedy measures, China holds that a time-frame for disputes concerning trade remedy measures should be specifically established in the negotiations which could be shorter than the normal time-frame of dispute settlement.

9. However, in light of the lack of resources of developing-country Members, a shortened time-frame may increase the difficulty of these members in the participation in the multilateral dispute settlement mechanism. In this connection, China proposes that, in cases where the defending party is a developing-country Member, the shorten time-frame shall not apply to the defending party.

China welcomes comments and suggestions from other Members on its proposal and will provide more detailed proposals in light of the development of the negotiations.
