

**TEXT FOR LDC PROPOSAL ON DISPUTE SETTLEMENT
UNDERSTANDING NEGOTIATIONS**

Communication from Haiti

The following communication, dated 17 January 2003, has been received from the Permanent Mission of Haiti on behalf of the LDC Group.

I. CONSULTATIONS

Article 4.10 should be amended as follows:

10. During consultations Members shall take into account the particular problems and interests of developing-country Members especially those of least-developed country Members. Possibilities of holding consultations in the capitals of least-developed country Members shall always be explored and a joint note to this effect made, which shall be considered in the event of the request for a panel and any proceedings.

II. THE PANELS' TERMS OF REFERENCE

Article 7 should be amended by adding the following paragraph:

4. Where a least-developed country Member is party or a third party to any dispute under this Understanding, the panels shall consider and make specific findings on the development implications of the issues raised in the dispute and shall specifically consider any adverse impact that findings may have on the social economic welfare of the least developed country Member. The DSB shall fully take those findings into account in making its recommendations and rulings.

III. COMPOSITION OF PANELS

Article 8.10 should be amended as follows:

10. When a dispute is between a developing-country Member and a developed-country Member the panel shall include one panelist from a developing-country Member, and if the developing-country Member so requests, there shall be a second panelist from a developing-country Member.

Article 8.10 should be further amended by renaming the current provision as paragraph (a) – as amended – and adding the following paragraph (b):

10. (b) *When a dispute is between a least-developed country Member and a developing or developed country Member, the panel shall include at least one panelist from a least-developed country Member and if the least-developed country Member so requests, there shall be a second panellist from a least-developed country Member.*

IV. TAKING ACCOUNT OF DIFFERENTIAL AND MORE FAVOURABLE TREATMENT

The panel should be under a clear obligation to take into account all relevant provisions for differential and more favourable treatment particularly for least-developed country Members, whether or not the parties have raised those provisions. Therefore, Article 12.11 should be amended as follows:

11. *Where one or more of the parties is a developing or least-developed country Member, the panel's report shall explicitly take into account the provisions on differential and more favourable treatment for developing- or least-developed country Members that form part of the covered agreements.*

V. COVERED AGREEMENTS

To specifically take into account the Decision on Measures in Favour of Least-Developed Countries, Appendix 1 should be amended by adding the following:

(D) *Decision on Measures in Favour of Least-Developed Countries*

VI. DISSENTING OPINIONS

Article 14.3 should be amended by replacing it with the following:

3. *In the report, each panelist shall deliver a separate written opinion on the issues and make findings, provided that panelists that are in agreement may provide joint opinions. The majority finding shall be the decision of the panel.*

Article 17.11 should be amended by replacing it with the following:

11. *In the report, individuals serving as Appellate Body members shall each deliver a separate written opinion on the issues and make findings, provided that Appellate Body members that are in agreement may provide joint opinions. The majority finding shall be the decision of the Appellate Body.*

VII. SPECIAL CONSIDERATION FOR LEAST DEVELOPED MEMBERS IN IMPLEMENTATION

Article 21.2 should be amended by adding the following footnote:

This provision qualifies paragraph 1 regarding promptly complying with the recommendations and rulings of the DSB.

Article 21.2 should be further amended as follows:

2. *Matters affecting the interests of least-developed countries and developing countries shall be taken into account in particular with respect to measures which have been subject to dispute settlement.*

Article 21.7 should be amended as follows:

7. *If a matter is one that has been raised by a developing- or least-developed country Member, the DSB shall take any further action as appropriate in the circumstances.*

Article 21.8 should be amended as follows:

8. *If the case is one brought by a developing- or least-developed country Member, in considering what appropriate action to take, the DSB shall take into account not only the trade coverage of measures complained of, but also their impact on the economy and the development prospects of developing country or least-developed country Members concerned. Further, if the case is one brought by a least-developed country Member against a developed country member, the DSB shall recommend monetary and other appropriate compensation taking into account the injury suffered. The quantification of injury and compensation shall be computed as from the date of the adoption of the measure found to be inconsistent with a covered Agreement to the date of the withdrawal of the measure.*

VIII. COLLECTIVE ENFORCEMENT OF RECOMMENDATIONS AND RULINGS

Article 22.6 should be amended by renaming the current provision as paragraph (a) and adding the following paragraphs (b) and (c):

(b) *Where the case is one brought by a least-developed country Member against a developed-country Member and the situation described in paragraph 2 occurs, and in order to promote the timely and effective implementation of recommendations and rulings made in favour of least developed country Members, the DSB, upon request, shall grant authorization to all Members to suspend concessions or other obligations within 30 days unless the DSB decides by consensus to reject the request. The following principles and procedures shall apply to such a request.*

(i) *Before making such a request, the least-developed country Member shall refer the matter to arbitration for determination of the level of nullification and impairment, which shall be done taking into account the legitimate expectations of the least-developed country Member. The arbitration shall further take into account any impediment TO the attainment of the development objectives of the WTO Agreement and as further elaborated upon by the least-developed country Member concerned.*

(ii) *The arbitration shall consider whether suspension of concessions or other obligations in other sectors by the least-developed country Member would be appropriate to effectively encourage the withdrawal of the measure found to be inconsistent with a covered Agreement, taking into account possible adverse effects on that least developed country Member.*

(iii) *Where the DSB grants authorization to all Members to suspend concessions or other obligations, the level of suspension for each Member shall be an appropriate percentage of the nullification and impairment determined under arbitration. In a case brought by a least-developed country Member, the level of suspension for each Member shall be the level determined under arbitration to have been suffered by the least-developed country Member.*

(c) *The DSB shall review the operation of paragraph (b) after a period of five years.*

IX. SPECIAL PROCEDURES INVOLVING LEAST-DEVELOPED MEMBERS

In order to make the involvement of the Director-General or the Chairman of the DSB mandatory and automatic, Article 24.2 should be amended by deleting the following words:

"upon request by a least-developed country Member"

Article 24 should be further amended by adding the following paragraph 3:

A developed country Member shall not commence a request for the establishment of a panel before fully using the good offices, conciliation and mediation before the Director-General or the Chairman of the DSB. When requesting for the establishment of a panel against a least-developed country Member, a developed-country Member shall provide the DSB with a written account of how it has exercised due restraint in accordance with paragraph 1. Where the DSB grants the request for the establishment of the panel, the developed country Member shall file the written account on due restraint with the panel, which shall make preliminary findings, before proceeding with the case, on the written account, on the basis of the provisions of paragraph 1, and on the existence and adequacy of efforts to reach a mutually agreed solution. Where the panel finds that due restraint has not been exercised or that no efforts or inadequate efforts had been made to reach a mutually agreed solution, it shall refer the matter to the DSB, which shall take those findings into account and make preliminary recommendations and rulings on the matter. In this regard, the DSB shall request the Director-General to provide good offices, conciliation and mediation.

X. RESPONSIBILITIES OF THE SECRETARIAT

Article 27.1 should be amended by adding the following:

The Secretariat shall avail the legal, historical and procedural research and other material prepared with respect to a dispute, to the least-developed country Members that are parties or third parties in the dispute. Such research and other material shall cover and specifically provide guidance on the specific rights and obligations relating to the particular issues raised in the case.

Article 27.2 should be amended by adding the following:

The Secretariat shall maintain a geographically balanced roster of legal experts from which least-developed country Members may select the experts to provide the legal services that the Secretariat is required to avail under this paragraph. Notwithstanding the reference to impartiality in the provision of legal and other services by the secretariat, the legal expert provided by the Secretariat shall fully discharge the functions of counsel to the least-developed country Member party to a dispute.
