

RESPONSES TO QUESTIONS ON THE SPECIFIC INPUT OF CHINA

Communication from China

The following communication, dated 15 May 2003, has been received from the Permanent Mission of the People's Republic of China.

China appreciates the interests of Members in China's proposal on improving special and differential treatment in the DSU to developing-country Members, including the LDCs. Exchange of views would help better clarify and develop ideas in this regard. China hereby would like to provide the following responses.

1. On the Issue of Limitation of Cases (Para 1 of Part IV. S&D Treatment of the proposal)

Article xx

Special and Differential Treatment to Developing Countries.

1. Developed-country Members shall exercise due restraint in cases against developing-country Members. Developed-country Members shall not bring more than two cases to the WTO Dispute Settlement Body against a particular developing-country Member in one calendar year.

(1) The legal basis and logic of the proposed article

The initiation to propose this article is inspired by the provisions in the WTO Agreements to grant S&D treatment to developing-country Members. As pointed out by China in its previous proposal, the lack of human and financial resources as well as capacities and experiences of developing-country Members results in *de facto* imbalance in the participation in the dispute settlement mechanism. However, in contrast to other covered agreements, most S&D treatments in the DSU are reflected through a best endeavour approach, which is insufficient to address this imbalance.

(2) Reasons to limit the number of cases to be initiated while no such limits under national and international laws

The WTO Agreements are not comparable to national laws. The WTO dispute settlement mechanism is also different from other international tribunals.

(3) Meanings of “bring” and “new case”

"Bring" refers to the action to request for the establishment of a panel. And new cases do not necessarily refer to cases involving subject matters different from those of previous cases.

(4) Developing-country status

China is a developing-country Member. As for the status of other Members, it has been a long tradition and practice of the GATT and the WTO for Contracting Parties or Members to self-declare their respective status. This tradition and practice should be applied within the framework of DSU.

(5) Calculation of number of cases

The intention of the proposal is to limit the number of cases initiated by developed-country Members to an individual developing-country Member. So long as a developed-country Member appears in a case, it shall be counted as one case, no matter as the only complainant or co-complainants.

The limit applies to panels established within a calendar year. If the request to establish a panel is made in a particular calendar year and the panel is established in the following year, this panel shall be counted toward the number of cases of the following year. The number of cases referred to in this context is the number of panels established in the same calendar year.

(6) Cases between developing-country Members

This new article is not intended to apply to disputes between developing-country Members.

(7) The duration of a “calendar year”

January 1 to December 31 of the same year.

(8) Will the value of the dispute settlement mechanism be affected by the limit of cases?

This proposed article will only apply to cases initiated by developed-country Members against developing-country Members. It will not affect cases between developed-country Members, cases between developing-country Members and cases initiated by developing-country Members against developed-country Members. Moreover, it is our belief that the value of the WTO dispute settlement mechanism does not depend on the number of cases or the number of panels established, but rather lies in the goodwill and trust among Members. And WTO Members are encouraged to seek all possible ways of solutions to trade disputes. Since the establishment of the WTO, many trade disputes were resolved through consultations rather than through panel proceedings, not to mention even more successfully resolved through bilateral channels. Thus such limit will not affect the “value” of this mechanism.

2. On the Issue of Legal Costs (Para 2 of Part IV. S&D Treatment)

2. 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 the 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.

(1) The definition and calculation of legal costs

In a broader sense, this concept shall refer to the costs that otherwise would not have happened without litigation with regard to the relevant disputes. More detailed definition and calculation method can be further discussed at technical level after being endorsed by Members.

(2) Mechanism to compensate legal costs

Members could be creative in this regard. For instance, developed-country Members could establish a trust fund to be administered by the WTO Secretariat for such purpose.

(3) In case of a loss of case taken by a developing-country Member against a developed-country Member, how the developed-country Member gets compensation

This is a proposal on S&D treatment to developing-country Members. It does not apply to the cases where a developed-country Member against a developing-country Member.

3. On the Issue of Shortened Time-Frame for Anti-dumping Cases (Para 2 of Heading IV. S&D Treatment)

Article xx

Shortened time-frame for disputes involving safeguard and anti-dumping measures.

1. *Time periods applicable under the DSU for dealing with disputes involving safeguard and anti-dumping measures shall be half of the normal timeframe.*

2. *If the defending party is a developing-country Member, the shortened time-frame shall not apply to the defending party.*

(1) The reason to shorten time-frame for anti-dumping cases

This proposal is to address the increasing abuse of anti-dumping measures for trade protection rather than trade remedy purposes. The shortened time-frame for anti-dumping cases will help to urge relevant authorities to correct their wrong decisions and avoid making harm to the interests of exporters.

(2) Normal time-frame

“Normal time-frame” in this proposal refers to the panel proceedings and Appellate Body process as defined in Appendix 3 and Article 17 of the DSU.

(3) Application

The shortened time-frame shall not apply where the defendant is a developing-country Member.
