

BRAZIL - MEASURES AFFECTING DESICCATED COCONUT

Request for the Establishment of a Panel by the Philippines

The following communication, dated 17 January 1996, from the Permanent Mission of the Philippines to the Chairman of the Dispute Settlement Body, is circulated at the request of that delegation.

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On 27 November 1995, the Government of the Philippines requested the Government of Brazil to enter into consultations pursuant to Article XXIII:1 of the 1994 General Agreement on Tariffs and Trade (GATT 1994). A copy of this request was notified to the Dispute Settlement Body (DSB) as well as to the Council for Trade in Goods, the Committee on Subsidies and Countervailing Measures and the Committee on Agriculture, in accordance with Article 4.4 of the Dispute Settlement Understanding (DSU).

The Philippines requested consultations under Article XXIII:1 because benefits under GATT 1994 are being nullified and impaired as a result of the 121.5 per cent countervailing duty imposed on Philippine exports of processed desiccated coconut products, which is inconsistent with Brazil's obligations under Article VI of GATT 1994, in particular with respect to paragraphs 3 and 6(a).

Even if assuming the development assistance extended to coconut farmers were to be considered subsidies, and that these were passed on entirely to benefit independent desiccated coconut processors, the Brazilian measure would also be inconsistent with Brazil's obligations under Article 13 of the Agreement on Agriculture.

Additionally, the Philippines is of the view that:

1. Brazil did not give the Philippines reasonable opportunity, throughout the investigation, to clarify the factual situation. As previously stated by the Philippine Government, there is no subsidy granted to desiccated coconut processing. Development assistance was provided to coconut farmers through a levy collected from them, and not through the government budget. These were private funds of the coconut farmers.
2. In calculating the amount of the subsidy and the countervailing duty, Brazil relied on "information available" which excluded data and information on the type of assistance programs to the coconut producers that was provided by the Philippines.

3. Brazil calculated the amount of the alleged subsidy and countervailing duty by treating the coconut fruit as substitutable for desiccated coconut when these two products are not like products. Moreover, Brazil is a producer of coconuts and desiccated coconut, both of which are available in the domestic market of Brazil, and should therefore not have treated the coconut fruit as a substitute for desiccated coconut.
4. In investigating the assistance programs to the Philippine coconut industry, Brazil failed to recognize that these programs, as implemented by a developing country like the Philippines, should not have been considered as subsidies *per se*. Moreover, as the Philippines had previously testified, the source of funds for the assistance programs came from a levy on coconut production, and not from any government budget.

For the further information of the DSB, Brazil has neither notified the WTO of the instruments that imposed the provisional countervailing duty of 14.1 per cent on 28 March 1995, nor the definitive countervailing duty of 121.5 per cent on 21 August 1995.

In its response dated 8 December 1995, Brazil stated that it was prepared to enter into consultations with the Philippines as long as it was mutually understood that those consultations would be undertaken exclusively under the 1979 Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (or, Tokyo Round Code on Subsidies and Countervailing Measures), under which auspices the coconut subsidies investigations were conducted and the countervailing duties imposed.

In a letter dated 13 December 1995, the Philippines replied that Brazil's response constituted a refusal of the request for consultations under Article XXIII:1, but that it hoped that Brazil would be able to engage the Philippines in such consultations within the 30-day period provided for in Article 4.3 of the DSU.

Unfortunately, Brazil has failed to enter into consultations with the Philippines within the period prescribed in the DSU.

The Government of the Philippines, therefore, requests the establishment of a Panel pursuant to Article XXIII:2 of GATT 1994 and Articles 4.3 and 6 of the DSU, and under the standard terms of reference provided for in Article 7.1 of the DSU. The Philippines requests that the Panel consider and find that:

1. The countervailing duty imposed by Brazil is inconsistent with paragraphs 3 and 6(a) of Article VI of GATT 1994.
2. Brazil should desist from further imposing the countervailing duty on desiccated coconut exports from the Philippines, and reimburse whatever duties were collected.

The Government of the Philippines submits this request for the establishment of a panel for inscription on the agenda of the next meeting of the DSB on 31 January 1996, and requests that this communication be circulated to all members of the DSB.