

Original: English

BRAZIL - MEASURES AFFECTING DESICCATED COCONUT

Notification of an Appeal by the Philippines under
paragraph 4 of Article 16 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU)

The following notification, dated 16 December 1996, sent by the Philippines to the Dispute Settlement Body (DSB), is circulated to Members. Simultaneously, a Notice of Appeal was filed with the Appellate Body pursuant to the Working Procedures for Appellate Review (WT/AB/WP/1).

Pursuant to Article 16(4) of the Understanding on Rules and Procedures Governing the Settlement of Disputes and Rule 20(1) of the Working Procedures for Appellate Review, please be informed that the Republic of the Philippines has decided to appeal to the Appellate Body on certain issues and interpretations of law covered and developed by the panel report on *Brazil - Measures Affecting Desiccated Coconut* (WT/DS22/R) (17 October 1996).

Attached is a copy of our corresponding letter addressed to the Appellate Body Secretariat and the Notice of Appeal, which is being filed simultaneously.

Notice of Appeal by the Republic of the Philippines

Pursuant to Article 16 of the Understanding on the Rules and Procedures Governing the Settlement of Disputes ("DSU") and Rule 20 of the Working Procedures for Appellate Review (the "Working Procedures"), the Republic of the Philippines (the "Philippines") hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the panel report on *Brazil - Measures Affecting Desiccated Coconut* (WT/DS22/R) (17 October 1996) and certain legal interpretations developed by the panel.

The Philippines seeks a review by the Appellate Body of the Panel's legal interpretations of Articles 32.3, 32.4, 32.1, 21 and 10 of the WTO Agreement on Subsidies and Countervailing Measures (which the Philippines did not invoke in its request for establishment of a panel, and in the terms of reference); the *Preamble*, and Articles II:2, II:4 and XVI:1 of the WTO Agreement; Articles I, II and VI of GATT 1994; Article 7.1 of the DSU; and other related provisions (including certain of the December 1994 transitional Decisions, and related GATT/WTO jurisprudence) - in connection with the Panel's principal conclusion that Articles I, II and VI of GATT 1994 are inapplicable to the present dispute.

The Philippines considers that the interpretations developed by the Panel are not supported by the text and context of the above-mentioned provisions, and by the object and purpose of the WTO Agreement; and improperly ignored other relevant provisions. The Panel's interpretations and conclusions are consequently contrary to the principles set out in the Vienna Convention on the Law of Treaties concerning the interpretation of treaties and the applicability of new treaties that have already entered into force. The Philippines further considers that the Panel erred in law when it failed to examine whether the measure at issue is inconsistent with Articles I and II of GATT 1994, and is not justified under the requirements of Article VI of GATT 1994.

The Philippines considers that there is sufficient basis, such as under DSU Article 19 and Rule 16(1) of the Working Procedures, for the Appellate Body to examine the disputed measure and to conclude that the measure is inconsistent with Articles I and II of GATT 1994 and/or is not justified under Article VI of GATT 1994; and to recommend that Brazil bring the measure into conformity with Articles I, II and VI of GATT 1994. Should the Appellate Body determine that such an examination of the disputed measure may require more time than is normally allocated to the appellate review process, the Philippines would have no objections if the Appellate Body were to decide to extend its proceedings beyond the standard time limits set out in the DSU and in the Working Procedures.