

# WORLD TRADE ORGANIZATION

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BRAZIL - COUNTERVAILING DUTIES ON IMPORTS OF  
DESICCATED COCONUT AND COCONUT MILK POWDER  
FROM SRI LANKA

Request for Consultations by Sri Lanka

The following communication, dated 23 February 1996, from the Permanent Mission of Sri Lanka to the Permanent Mission of Brazil and to the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

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I refer to the bilateral consultations our two countries had in Geneva, in your Mission on 20 October 1995, following our Diplomatic Note No. UN/GATT/15 dated 1 September 1995, and the prompt response of your Mission thereto on the above subject, copies of which are attached herewith for your easy reference.

As you are aware, these consultations were held following a formal complaint by Sri Lanka seeking bilateral consultations with your Government under Article XXII of GATT 1994, concerning the imposition of excessive countervailing duties levied by the Government of Brazil on the import of desiccated coconut and coconut milk powder from Sri Lanka amounting to 81.4 per cent and 175.8 per cent respectively, with effect from 21 August 1995.

At these consultations, Sri Lanka brought to the notice of Brazil that the countervailing action by Brazil on the products under reference was in violation of Sri Lanka's rights under the WTO which highlighted the following facts:

1. Sri Lanka and Brazil are both signatories to the WTO Agreement and consequently, Sri Lanka's trade relationship with Brazil in a multilateral context is basically governed by such multilateral instruments as the GATT 1994 which is an integral part of WTO. Accordingly, Sri Lanka's legal rights in the Multilateral Trading System emanate from international legal instruments such as GATT 1994.
2. Brazil, by its imposition of countervailing duties on desiccated coconut and coconut milk powder in August 1995, has violated the cardinal tenet and the basic principle of the multilateral trading system as embodied in GATT Article I, namely Most-Favoured-Nations principle.
3. Brazil by imposition of countervailing duties on the two products under reference has clearly violated Article II of GATT 1994, dealing with tariff bindings since these countervailing duties are in excess of bound tariff.

4. Violations of Article I and II cannot be justified under Article VI of GATT 1994, since Article 13(a) of the WTO Agreement on Agriculture is an integral part of the WTO Agreement and its domestic support measures like those given to Sri Lanka coconut industry fully conform to the provisions of Annex II to this Agreement.
5. Brazilian action has therefore resulted in a clear nullification and impairment of benefit accruing to Sri Lanka from the WTO Agreement.

Your Government's response to the views presented by Sri Lanka at these consultations was that imposition of countervailing duties by Brazil is fully covered by legal protection accorded to it by the Tokyo Round Agreement on Subsidies and Countervailing Measures.

Sri Lanka considers the consultations it has had so far with Brazil as being useful as it has enabled both countries to understand initially each others perceptions on the matter. However, Sri Lanka feels that in order to arrive at a mutually acceptable solution, it is essential that additional consultations should be held urgently in view of the grave situation experienced by the coconut export industry in Sri Lanka as a result of the Brazilian countervailing duty action.

In view of the above, I shall therefore be grateful if you will kindly convey to your authorities Sri Lanka's desire to hold additional bilateral consultations under Article XXIII:1 of GATT 1994, and to propose an early date for the conduct of such consultations.

*Note Verbale from the Permanent Mission of Sri Lanka to the  
Permanent Mission of Brazil dated 1 September 1995*

The Permanent Mission of the Democratic Socialist Republic of Sri Lanka presents its compliments to the Permanent Mission of Brazil to the United Nations in Geneva, and has the honour to state with profound regret, that the Government of Sri Lanka is deeply concerned to learn from the Brazilian Government Public Notice dated 21 August 1995, that Brazil has imposed excessively high countervailing duties on the import of Sri Lankan desiccated coconut and coconut milk powder amounting to 81.4 per cent and 175.8 per cent respectively, with effect from 21 August 1995. It is the firm conviction of the Government of Sri Lanka that drastic countervailing action by Brazil on the above two Sri Lankan export products is totally unjustifiable and unreasonable in view of its adverse impact on Sri Lanka's export of these products to Brazil.

The Permanent Mission of the Democratic Socialist Republic of Sri Lanka avails itself of this opportunity to emphatically state the view of the Government of Sri Lanka that consequent on this drastic countervailing action by Brazil, Sri Lanka's export trade flow in desiccated coconut and coconut milk powder to Brazil will come to a grinding halt, thereby negatively affecting Sri Lanka's overall level of export trade with Brazil, due to its virtual dependence solely on these two products. Moreover, such a scenario of a complete stoppage of Sri Lanka's exports of these products to Brazil will, certainly, not augur well, not only for the continued development of the trade relations between the two countries, but also for the very existence of bilateral trade relations and such an unfavourable situation is best avoided, in the larger interests of the bilateral trading relationship between Sri Lanka and Brazil.

In view of above considerations, the Permanent Mission of the Democratic Socialist Republic of Sri Lanka wishes to convey the request of the Government of Sri Lanka that Brazilian authorities favourably consider the immediate withdrawal of the above mentioned countervailing duties on Sri Lanka's desiccated coconut and coconut milk powder. Pending any action for removal of these countervailing duties, the Government of Sri Lanka is willing to enter into urgent bilateral consultations in terms of Article XXII of GATT 1994 of the WTO Agreement with the Brazilian authorities, with a view to exploring all possibilities of amicably resolving this issue early, thereby obviating any need for Sri Lanka to have recourse to its multilateral remedy within the framework of the World Trade Organization in Geneva, of which both Sri Lanka and Brazil are Members. The Government of Sri Lanka may be most reluctantly compelled to seek its multilateral remedy, in the WTO, if this issue could not be resolved bilaterally through mutual consultations.

*Letter from the Permanent Mission of Brazil to the  
Permanent Mission of Sri Lanka dated 11 September 1995*

The Permanent Mission of Brazil to the United Nations Office and other International Organizations in Geneva presents its compliments to the Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations Office, Geneva, and has the honour to acknowledge receipt of its Note Verbale ref: UN/GATT/15, dated 1 September 1995, in which the Permanent Mission of Sri Lanka conveys the concern of its Government with "the Brazilian Government Public Notice dated 21 August 1995" in which alleged excessive countervailing duties on imported desiccated coconut and coconut milk from Sri Lanka were imposed.

Complying with the request of urgent bilateral consultations under Article XXII of GATT 1994, as requested by the Permanent Mission of Sri Lanka in the aforementioned Note Verbale, the Permanent Mission of Brazil informs the said Mission that it is ready to enter into formal consultations under that GATT 1994 Article.