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BRAZIL - MEASURES AFFECTING DESICCATED COCONUT

Request for Consultations by the Philippines

Revision

The following communication, dated 27 November 1995, from the Permanent Mission of the Philippines to the Permanent Mission of Brazil was notified to the Dispute Settlement Body and is circulated at the request of the Permanent Mission of the Philippines in accordance with Article 4.4 of the DSU.

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In connection with the countervailing duty imposed by Brazil on Philippine's exports of desiccated coconut, I wish to request formal consultations with Brazil under Article XXIII:1 of GATT 1994.

I understand that Brazil has reservation about our recourse to WTO dispute settlement procedures. It is the view of the Philippines that provisions of the Tokyo Round Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the GATT (Tokyo Round Agreement), are an elaboration of the fundamental obligations of Article VI of GATT 1947, and that these fundamental obligations subsist under GATT 1994.

Furthermore, the Philippines wishes to refer Brazil to paragraph 2(a) of the Decision of 8 December 1994 by the Preparatory Committee for the WTO with respect to the Transitional Co-Existence of the Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade and the Marrakesh Agreement Establishing the World Trade Organization.<sup>1</sup>

In the consultations we request, we would like to state our position with respect to the inconsistency of Brazil's countervailing duty on Philippine's exports of desiccated coconut products with, *inter alia*, paragraphs 3 and 6(a) of Article VI of GATT 1994, with the end in view of arriving at a mutually agreed solution.

Additionally, at the consultations, we wish to reiterate our view that:

1. The Philippines was not given 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 processors;

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<sup>1</sup>See document PC/15-L/7586.

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 (i.e., a tax) on coconut production, and not from any government budget.
5. Brazil has failed to notify to the WTO, without delay, the instruments that imposed the provisional duty on 28 March 1995 and the definitive duty on 21 August 1995.

In the proposed consultations the Philippines also wishes to state our position that Brazil's measure is inconsistent with Article 13 of the WTO Agreement on Agriculture.

Finally, notwithstanding this request for consultations under Article XXIII:1, I wish to reserve our rights under the Tokyo Round Agreement.