

WORLD TRADE ORGANIZATION

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BRAZIL - MEASURES AFFECTING DESICCATED COCONUT

Communication from Brazil

The following communication, dated 24 January 1996, from the Permanent Mission of Brazil to the Chairman of the Dispute Settlement Body, is circulated at the request of that Delegation.

I have the honour to convey to you herewith a copy of document SCM/193 on the issue of countervailing duties imposed by Brazil on imports of processed desiccated coconut from the Philippines. The matter was referred to during the Tokyo Round Committee held on 31 October 1995.

As you will learn from the paper, during the past few months Brazil and the Philippines have faced, besides substantive issues relating to the Brazilian measure, the question of the applicable law under which consultations ought to be requested. Brazil understands, for the reasons indicated in the position paper, that the Tokyo Round Code on Subsidies and Countervailing Measures should be the only legal framework applicable to the dispute, whereas the Philippines espouse the opposite view.

In order to clarify the matter and to seek transparency on the subject with all the Tokyo Round Committee Members, the Brazilian Mission requested that said position paper be circulated, as a Committee document, among Members of the Committee on Subsidies and Countervailing Measures of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the Tokyo Round Committee on Subsidies and Countervailing Measures) before 31 January.

Considering that, at the request of the Philippine Mission, the issue has been included in the agenda for the next meeting of the Dispute Settlement Body to be held on 31 January, I kindly request that the present letter and its attached document SCM/193 be circulated as a WTO document under a DS symbol, to all WTO Members before the DSB meeting.

Brazil understands that the DSB is not the appropriate forum for the discussion on the dispute with the Philippines and wishes to circulate document SCM/193 among WTO Members for information purposes only and without prejudice to its rights under the Tokyo Round Code on Subsidies and Countervailing Measures and to its position on the applicable law.

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

RESTRICTED

SCM/193

26 January 1996

Special Distribution

(96-0274)

Committee on Subsidies and Countervailing Measures

Original: English

**BRAZIL - IMPOSITION OF COUNTERVAILING DUTIES ON IMPORTS
OF PROCESSED DESICCATED COCONUT FROM THE PHILIPPINES**

Communication from Brazil

The following communication, dated 24 January 1996, has been received from the Permanent Mission of Brazil.

I have the honour to convey to you herewith a position paper prepared by Brazil on the issue of countervailing duties imposed by Brazil on imports of processed desiccated coconut from the Philippines. The matter was referred to during the Tokyo Round Committee held on 31 October 1995.

As you will learn from the paper, during the past few months Brazil and the Philippines have faced, besides substantive issues relating to the Brazilian measure, the question of the applicable law under which consultations ought to be requested. Brazil understands, for the reasons indicated in the position paper, that the Tokyo Round Code on Subsidies and Countervailing Measures should be the only legal framework applicable to the dispute, whereas the Philippines espouse the opposite view.

In order to clarify the matter and to seek transparency on the subject with all the Committee Members, I kindly request that the said position paper be circulated, as a Committee document, among Members of the Committee on Subsidies and Countervailing Measures of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the Tokyo Round Committee on Subsidies and Countervailing Measures) before 31 January.

The Permanent Mission of Brazil in Geneva hereby submits relevant information concerning the adoption of countervailing duties on imports of desiccated coconut from the Philippines.

I. Summary of the Investigation and the Legal Framework

1. The Brazilian authorities initiated investigations on subsidies granted to coconut processors in the Philippines and four other countries through Public Notice SECEX No. 40, dated 21 July 1994.

2. The investigations were based on the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the Tokyo Round Agreement on Subsidies and Countervailing Measures), to which the Philippines and Brazil are parties.

3. After preliminary findings, the Brazilian authorities imposed provisional countervailing duties on imports of Philippine desiccated coconut through Public Notice No. 113, dated 23 March 1995. Later, the Brazilian authorities concluded that subsidies actually existed and imposed definitive countervailing measures on imports of processed desiccated coconut from the Philippines through Public Notice No. 11, dated 10 August 1995.

II. Discussions with the Philippine Side

4. On 10 November 1995, the Permanent Representative of the Philippines in Geneva addressed a letter to the Chairman of the Committee on Subsidies and Countervailing Measures in which she informed that the "Government of the Republic of the Philippines wishes to initiate procedures under Article 17 of the Tokyo Round Agreement on Subsidies and Countervailing Measures ...". Brazil replied on 14 November that since formal consultations under the Tokyo Round Code had not been requested nor had taken place, it would be improper to jump to the conciliation process of Article 17. Brazil also indicated that it was ready to start formal consultations upon request by the Philippines.

5. On 27 November 1995, the Permanent Representative of the Philippines addressed a letter to the Permanent Representative of Brazil requesting formal consultations under Article XXIII:1 of GATT 1994. The Brazilian answer, dated 8 December 1995 stated that the Permanent Mission of Brazil was ready for consultations "as long as it was mutually understood that those consultations will be undertaken exclusively under the Code on Subsidies and Countervailing Measures [...] resulting from the Tokyo Round, under which auspices coconut subsidies investigations were conducted and countervailing duties imposed".

6. On 13 December 1995, the Philippines replied that the Brazilian answer constituted a refusal of their request for consultations under Article XXIII:1 of GATT 1994.

7. On 10 January 1996, Brazil once again reiterated the contents of its previous letter dated 8 December, in which it was informed that Brazil was "prepared to enter into consultations with the Philippines on the matter of countervailing duties imposed by Brazil on imports of desiccated coconut from the Philippines. Since the investigation and the imposition of definitive countervailing duties were held under the Tokyo Round Code on that specific matter [...]. Brazil considers that the legal framework for consultations on the subject is the same Tokyo Round Code, which is still in place until the end of the current year for dispute settlement purposes".

8. Brazil has, therefore, for three times offered formal consultations to the Philippines. No reply in the sense of the acceptance of those offers ever reached the Brazilian mission.

9. In a letter dated 16 January 1996 the Government of the Philippines informed the Government of Brazil that they had decided to request a panel.

III. Brazilian Arguments

10. The Brazilian position on this matter is as follows:

- (a) The Philippines stand in favour of the application of Article VI of GATT 1994 to this dispute is unacceptable to Brazil and raises relevant systemic issues of interest to all Members of the WTO;
- (b) The Brazilian investigation started in 1994, under the Tokyo Round Code on Subsidies and Countervailing Measures;

- (c) The Tokyo Round Code is in force until 31 December 1996 and may be invoked by the Philippines;
- (d) Furthermore, the scope of Article VI of GATT 1947 is legally distinct from that of Article VI of GATT 1994. Article VI of GATT 1947, as interpreted by the Tokyo Round Agreements, embodied a specific set of rights and obligations; Article VI of GATT 1994, as interpreted by the Agreement on Subsidies and Countervailing Measures, embodies another specific set of rights and obligations. To invoke Article VI of GATT 1994 implies the adoption of the specific views of the WTO agreements as opposed to those of the Tokyo agreements. Therefore, to invoke now Article VI of GATT 1994 to a dispute started under the Tokyo Round Code would constitute an attempt to apply an inappropriate legal framework;
- (e) Any attempt to frame the present case within the scope of the WTO agreements constitutes an attempt to circumvent the application of the appropriate law;
- (f) No formal consultations ever took place between the Brazilian and the Philippine Missions in Geneva, in spite of reiterated Brazilian offers to do so.

VI. Conclusions

11. In summary, Brazil reiterates its disposition to consult with the Philippine Mission on the basis of the relevant provisions of the Tokyo Round Code on Subsidies and Countervailing Measures.

12. Brazil considers this issue of particular interest to all WTO Members because in substantive terms it goes well beyond the question of the adoption of a certain level of countervailing duties. In fact, the central issue is the question of the application of the appropriate legal framework.