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THAILAND – SUBSIDIES ON SUGAR

REQUEST FOR CONSULTATIONS BY BRAZIL

The following communication, dated 4 April 2016, from the delegation of Brazil to the delegation of Thailand and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Kingdom of Thailand ("Thailand") pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article XXII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), Article 19 of the Agreement on Agriculture, and Articles 4, 7, and 30 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement") concerning the subsidies provided by Thailand to the sugar sector.

By means of its sugar regime, Thailand strictly controls virtually every aspect of its sugar sector, including the production, storage, transport, sale, import, export, and other activities applicable to cane, raw sugar, white sugar, molasses, and sugar by-products.

Thailand imposes a quota system that limits the quantity of sugar sold in the domestic market and imposes price controls on ex-factory, wholesale, and retail sales of cane and sugar in the country. Thailand's quota system guarantees a high price for the sugar produced for domestic consumption (Quota A). Sugar produced in excess of this quota cannot be sold internally and must be exported (Quotas B and C). Thailand's quota and price control system cross-subsidizes exports of Quota B and Quota C sugar in a manner inconsistent with WTO rules. Moreover, Thailand supplements the fixed prices for cane sales to sugar mills with additional payments to cane growers. Because Thailand has not specified any export subsidy commitments in Section II of Part IV of its Schedule, Brazil is of the view that Thailand's quota and price control system and its supplementary payments to cane growers constitute export subsidies for sugar in violation of Thailand's obligations under the Agreement on Agriculture.

Thailand also provides subsidies to convert substantial agriculture land from rice to cane production and to develop additional capacity to manufacture cane into sugar. Thailand's domestic support for cane and sugar in the form of price support, supplementary payments to cane growers, and incentives to convert land used for rice production to cane production and to develop additional capacity to manufacture cane into sugar exceeds the *de minimis* level. Because Thailand's domestic support for the sugar sector alone exceeds its total AMS commitment level specified in its Schedule, Thailand violates its obligations under the Agreement on Agriculture.

Thailand's quota and price control system, supplementary payments to cane growers, and incentives to convert rice production to cane production and to develop additional capacity to manufacture cane into sugar also constitute prohibited and actionable subsidies under the SCM Agreement.

Brazil understands that Thailand's sugar regime is composed of a substantial number of laws, regulations, policies, notices, and other measures applicable to Thailand's sugar sector. Relevant legal instruments include, but are not limited to, the following, operating separately or collectively:

1. The Cane and Sugar Act, B.E. 2527 (1984);
2. The Prices of Goods and Services Act, B.E. 2542 (1999);
3. Bank for Agricultural and Agricultural Cooperatives Act, B.E. 2509 (1966);
4. Bank for Agriculture and Agricultural Co-operatives Act (No. 6), B.E. 2549 (2006);
5. The Agricultural Economics Act, B.E. 2522 (1979);
6. Export and Import of Goods Act, B.E. 2522 (1979); and
7. Export Standards Act No. 2, B.E. 2522 (1979).

Additional relevant measures are identified in the **Annex** to this request. The list is not exhaustive and includes any amending, substituting, or implementing measures, some of which are issued on an annual basis or numerous times per year and may apply to one or more sugar growing seasons. Brazil also understands that certain measures, although referenced in media reports and in statements by government officials, are not publicly available.

Brazil considers that Thailand's sugar regime violates its obligations, *inter alia*, under the following provisions of the Agreement on Agriculture and the Agreement on Subsidies and Countervailing Measures:

1. Articles 3.3, 8, and 9.1 of the Agreement on Agriculture;
2. Article 10.1 of the Agreement on Agriculture;
3. Articles 3.2 and 6.3 of the Agreement on Agriculture;
4. Article 3.1(a) and 3.2 of the SCM Agreement; and
5. Articles 5(c) and 6.3 of the SCM Agreement.

In the Annex to this request for consultations and in accordance with Articles 4.2 and 7.2 of the SCM Agreement, Brazil provides a list of regulations, documents, and statistical information that constitute available evidence of the existence and nature of the subsidies in question and the serious prejudice to Brazil's interests.

Brazil reserves the right to raise additional claims and measures and address additional legal and factual issues under other provisions of the covered agreements during the course of the consultations.

My authorities look forward to receiving in due course the reply of Thailand to the present request and to considering with Thailand a mutually convenient date and venue to hold consultations.

ANNEX**Statement of Available Evidence in Accordance with
Articles 4.2 and 7.2 of the SCM Agreement**

Brazil's request for consultations dated 4 April 2016 identifies the subsidy measures that are part of this request for consultations. The evidence set out below is evidence presently available to Brazil regarding the existence and nature of those subsidy measures and the serious prejudice caused by them to the interests of Brazil. Brazil reserves the right to supplement or alter this list in the future, as appropriate.

The evidence presently available to Brazil includes, in addition to relevant measures referenced in its request for consultations, the following:

- Notification of the Central Commission on Price of Goods and Services Re: Defining Controlled Products (2003), Government Gazette (13 May 2003)
- Minutes of the Board Meeting No. 3/2548 held on 16 February 2005
- Regulation of the Cane and Sugar Board Re: Determination of the Rates of Fees on Research and Promotion of Production of Cane and Sugar and Payment Method B.E. 2549 (2006), Government Gazette (31 March 2006)
- Regulation of the Cane and Sugar Board Re: Rules, Procedures and Conditions regarding the Permission to Export Sugar, B.E. 2550 (2007), Government Gazette (16 February 2007)
- Regulation of the Cane and Sugar Board Re: Production, Packing, Storage Place, Survey, Transport, Delivery of Sugar and Sale of Sugar for Consumption in the Kingdom, B.E. 2550 (2007), Government Gazette (17 October 2007)
- Regulation of the Cane and Sugar Board Re: Determination of Quantity of Sugar for Sugar Mills, B.E. 2550 (2007), Government Gazette (26 December 2007)
- Cabinet Resolution 0506/6371 Re: Remedy for suffering of cane growers and national cane agenda (30 April 2008)
- Notification of the Cane and Sugar Board Re: Determination of Sale Price of Sugar for Consumption in the Kingdom, Government Gazette (30 April 2008)
- Regulation of the Cane and Sugar Board Re: Rules, Procedures and Conditions on Collection of the Money from the Sale of Sugar and Refined Sugar within the Kingdom to the Cane and Sugar Fund B.E. 2551 (2008), Government Gazette (29 July 2008)
- Notification of the Cane and Sugar Board Re: Rules and Procedures regarding Preparation of Estimation of Income, Determination and Payment of Cane Price and Sugar Production Cost and Remuneration Sharing Ratio between Cane Growers and Sugar Mills B.E. 2553 (2010), Government Gazette (17 February 2010)
- USDA GAIN Report (TH0066) Thailand, Sugar Annual 2010 (9 April 2010)
- Secretary General Apichart Jongskul, Office of Agricultural Economics, "'Agricultural Economics Crop Zoning in Thailand'" (12 December 2012)
- Rich Keller, "'Land Conversion to Cane and Lower Rice Subsidy,'" Ag Professional (12 August 2013)
- Notification of the Cane and Sugar Board Re: Determination of Preliminary Cane Price and Preliminary Remuneration for Production and Sale of Sugar for Crop Year 2013/2014, Government Gazette (25 December 2013)

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- Government of Thailand, "'PM Follows up on Agricultural Crops Situation and Zoning"' (21 March 2014)
 - Notification of the Cane and Sugar Board Re: Installment of the Sale of Quota A Sugar for the Crop Year 2013/14 (21 November 2014)
 - BAAC Annual Report FY 2013-2014
 - Notification of the Cane and Sugar Board Re: Determination of Final Cane Price and Final Remuneration for Production and Sale of Sugar for Crop Year 2013/2014, Government Gazette (9 January 2015)
 - Supunnabul Suwannakij, "'Thai Junta to Cut Rice Crop to Combat Glut as Reserves Sold,'" Bloomberg Business (1 February 2015)
 - Notification of the Central Commission on Price of Goods and Services Re: Determination of Price and Rules, Conditions for the Sale of Sugar of 2015, Government Gazette (18 March 2015)
 - USDA GAIN Report (TH5047) Thailand, Sugar Annual 2015 (9 April 2015)
 - Antoine Meriot, "'Thailand's Sugar Policy: Government Drives Production and Export Expansion"' (3 June 2015)
 - Cabinet Resolution 0505/19314 Re: Assistance and remedy for suffering of cane growers for the crop year 2014/2015 (4 June 2015)
 - Notification of the Cane and Sugar Board Re: Determination of the Rates of Fees on Research and Promotion of Production of Cane and Sugar for Crop Year 2014/2015, Government Gazette (31 August 2015)
 - USDA Grain/Feed Annual 2015
 - "'Thailand Sugar Semi-Annual 2015.'" USDA Foreign Agricultural Service, GAIN Report Number TH5120, 1 October 2015
 - "'Sugar: World Markets and Trade"' USDA Foreign Agricultural Service, November 2015
 - "'World and U.S. Sugar and Corn Sweetener Prices: Table 3b.'" USDA Economic Research Service, Sugar and Sweeteners Yearbook Tables, 4 January 2016
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