

BRAZIL – DESICCATED COCONUT¹

(DS22)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	<i>Philippines</i>	<i>GATT Arts. I, II and VI</i> <i>AA Art. 13</i>	Establishment of Panel	<i>5 March 1996</i>
			Circulation of Panel Report	<i>17 October 1996</i>
Respondent	<i>Brazil</i>		Circulation of AB Report	<i>21 February 1997</i>
			Adoption	<i>20 March 1997</i>

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** A countervailing duty Brazil imposed on 18 August 1995 based on an investigation initiated on 21 June 1994.
- **Product at issue:** Desiccated coconut and coconut milk imported from the Philippines.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Arts. I (most-favoured-nation treatment), II (schedules of concessions) and VI (anti-dumping and countervailing duties):** The Appellate Body upheld the Panel's finding that GATT Arts. I, II and VI did not apply to the Brazilian countervailing duty measure at issue because it was based on an investigation initiated prior to 1 January 1995, the date that the WTO Agreement came into effect for Brazil. Specifically, the Panel found: (i) the subsidy rules in the GATT cannot apply independently of the ASCM; and (ii) non-application of the ASCM renders the subsidy rules in the GATT non-applicable. As for GATT Arts. I and II, they did not apply to this dispute because the claims under these provisions derived from the claims of inconsistency with Art. VI.
- **AA Art. 13 (due restraint):** The Panel found that the exemption for countervailing duties contained in AA Art. 13 did not apply to a dispute based on a countervailing duty investigation initiated prior to the date the WTO Agreement came into effect.

3. OTHER ISSUES²

- **Terms of reference:** The Appellate Body noted that a panel's terms of reference serve two important functions: (i) they fulfil the important due process objective of giving parties and third parties sufficient information about the claims at issue to allow them an opportunity to respond to the complainant, and (ii) they establish the panel's jurisdiction by defining the precise claims at issue.

¹ *Brazil – Measures Affecting Desiccated Coconut*

² Other issues addressed: special terms of reference (DSU Art. 7.3); requirements of panel request (DSU Art. 6.2).