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BRAZIL – ANTI-DUMPING DUTIES ON JUTE BAGS FROM INDIA

Request for Consultations by India

The following communication, dated 9 April 2001, from the Permanent Mission of India to the Permanent Mission of Brazil and to the Chairman 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 Government of Brazil pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article 17 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement or ADA) and Article XXIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994) regarding: (1) determination of Brazilian Government to continue to impose anti-dumping duties on jute bags and bags made of jute yarn from India based on forged document regarding dumping margin attributed to a non-existent Indian company; (2) refusal to reconsider the decision to continue anti-dumping duties on Indian jute products despite the fact about non-existence of that company was brought to the notice of authorities; (3) non-consideration of the fresh evidence regarding cost of production, domestic sales prices, export prices, etc., of Indian jute manufacturers and refusal to initiate review of the decision to impose anti-dumping duties; (4) inconsistency of general practice of Brazil regarding review and imposition of anti-dumping duties with their WTO obligations; and (5) inconsistency of Brazilian anti-dumping laws and regulations with ADA, GATT 1994 and the WTO Agreement.

The Government of India considers that these determinations and actions are erroneous and are based on deficient procedures contained in Brazilian anti-dumping law and procedures. The relevant determinations and statutory provisions include, but are not limited to:

1. Determination of Brazil not to revoke but to continue to impose anti-dumping duty for a further period of five years on imports of jute bags from India by circular no. 254/98 and inter-ministerial decree no. 16 dated 15 September 1998, which was published as inter-ministerial administrative ruling MICT/MF no. 16 on 24 September 1998;
2. Rejection of review application of the Jute Manufacturers Development Council of India (JMDC) and the Consulate General of India (GCI) by the Director of the Department of Trade Defence (DECOM) vide his official letter no. DECOM/GEAPE-99/1874 dated 8 December 1999 and the technical report enclosed therewith;
3. Rejection of revision petition of the JMDC and CGI giving information about production costs, domestic sale prices, export prices, etc., by the Director of DECOM vide his official letter no. DECOM/GEAPE Notice 00/1169 dated 11 September 2000 and the technical report dated 8 September 2000 enclosed therewith;

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4. Article 58 of Decree No. 1.602 of 1995.

These determinations and legal provisions raise questions concerning the obligations of Brazil under the GATT 1994, the ADA and the Agreement Establishing the World Trade Organization (WTO Agreement). The provisions of these agreements, with which these measures and determinations appear to be inconsistent, include, but are not limited to, the following:

1. GATT 1994, Articles VI and X;
2. Anti-Dumping Agreement, Articles 1, 2, 3, 5, 6 (especially 6.6, 6.7, 6.8 and Annex II, 6.9 and 6.10), 11, 12, 17.6(i), 18.3 and 18.4; and
3. WTO Agreement, Article XVI.

In addition, the determination to continue the anti-dumping duties also appears to nullify and impair benefits accruing to India under, or otherwise impedes the attainment of objectives of, the cited agreements.

The Government of India reserves its right to raise further factual claims and legal issues during the course of consultations.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.
