

Before the Trade Policy Staff Committee

Office of the United States Trade Representative

2008 GSP Annual Review

Responses in Support of Petition

To Designate HTSUS 2009.41.20 and 2009.49.20

As Eligible Articles Under the Generalized System of Preferences

And

In Support of Request for Competitive Need Limit Waiver for Imports from

The Philippines

(Case Numbers 2008-08 and 2008-09)

03 November 2008

**Ambassador Willy C. Gaa**

Embassy of the Philippines

1600 Massachusetts Ave., NW

Washington, D.C. 20036

**PHILIPPINES: *ADD PINEAPPLE JUICE – NOT CONCENTRATED***

**Ambassador Willy C. Gaa**

**[Government of Republic of the Philippines]**

- 1. In your prepared statement you state that the addition or granting of GSP status of this product will assist in your government's efforts to reduce poverty and therefore, address one fundamental cause of terrorism in the Mindanao region. What other activities is your government pursuing to achieve those goals?**

The Philippine Government's initiatives to address poverty and the cause of terrorism, thereby advance the peace process, are geared toward establishing long-term enduring peace in Mindanao through the following strategies:

- Harnessing inter-religious cooperation as an important means to pursue peace through the conduct of community-based interfaith dialogues;
- Partnering with civil society organizations in the conduct of interfaith and intercultural initiatives in multicultural Mindanao resulting in the mutual understanding of the beliefs and practices of neighbors;
- Pursing peace negotiations with rebel groups in Mindanao with Disarmament, Demobilization and Reintegration (DDR) being frontloaded in the peace talks track;
- Continuing conduct of dialogues and consultations with communities and stakeholders to obtain views and recommendations on how to push the peace process forward and at the same time acquire ownership of the peace process;
- Continuing maintenance of mechanisms on the ground such as the International Monitoring Team (IMT), Joint Coordinating Committee on the Cessation of Hostilities (JCCCH), Local Monitoring Teams and the Ad Hoc Joint Action Group (AHJAG);
- Continuing implementation of signed peace agreement with the Moro National Liberation Front (MNLF);
- Mainstreaming of Madrasah education to the basic education system of the Philippine Government and training of "Asatidz" or Madaris teachers; and
- Initiating efforts to mainstream Indigenous Peoples education to the basic education system of the Philippine Government.

Specifically, the following thrusts, programs, among others, are being implemented:

- (a) **Rehabilitation and Development of Conflict Areas in Mindanao** (Medium Term Philippine Development Plan, 2004-2010). For affected areas in Muslim Mindanao (which may include Moro National Liberation Fund communities), the following multi-donor-assisted funds are being mobilized such as: Autonomous Region of Muslim Mindanao (ARMM) Social Fund for Peace and Development, United Nations (UN) Multi-Donor Funds, European Union-UNDP Fund for Rehabilitating Internally Displaced Persons (IDPs), and the Mindanao Trust Fund to cover 150 identified conflict-affected municipalities.
  - (b) **Action for Conflict Transformation (ACT) for Peace Programme** - This is the fourth and final phase of the Government of the Philippines – United Nations Multi-Donor Programme (GoP-UNMDP) that started in 1997. During the 7th Mindanao Working Group meeting held at the Manila Pavilion on October 2, the United Nations Development Program (UNDP) pledged additional funds for the program to support peace-building initiatives.
  - (c) **Mindanao Economic Development Council (MEDCo)**. According to MEDCo, in the area of peace-building, various independent outcome evaluation missions of different peace-building programs in Mindanao have specifically noted various contributions of ongoing peace-building initiatives to the reduction of violent conflict. Indications of personal transformations, community empowerment and institutional capacities for conflict management are just a few of the important and critical transformation that can be seen in Mindanao.
  - (d) **Peace and Security Programs with USAID**. The Philippine Government works with USAID and the private sector to strengthen the foundation for peace and development in conflict-affected areas of Mindanao. Programs give former combatants job skills and expand trade and marketing networks. Local officials are also being trained in alternative dispute resolution mechanisms in more than 1,000 villages.
2. **According to the ILRF pre-hearing brief, the Philippines Department of Labor and Employment issued cease and desist orders against Dole Philippines' relationships with "labor-only contracting cooperatives". The Philippines Supreme Court apparently upheld these orders in 2006 (Dole Philippines, Inc., v. Medel Esteva, G.R. No. 161115, Philippines Supreme Court, November 30, 2006). Has the Government of the Republic of the Philippines taken any steps to enforce the Department of Labor and Employment's Cease and Desist order regarding contract labor with Dole Packaged Foods? If not, why not?**

At the very outset, the GRP in answer to the question, would like to establish two (2) correlated points. First, ***the matter of the cease and desist orders were***

***in fact brought about thru governmental initiative, flowing from which a follow thru action was effected to the end that the matter has long been finally settled, closed and terminated.*** Correlatively, the raising of this matter by the ILRF with the USTR is essentially in a manner of speaking, an effort at trying to “resurrect a dead horse.”

It must be pointed out that the proceedings docketed as Administrative Case No. R1100-9310-RI-355 entitled “IN RE: Investigation Conducted Among Cooperatives Organized and Existing in Polomolok, South Cotabato, Particularly at Dole Philippines, Inc. Relative To Labor-only Contracting Activities” as the title itself connotes, was undertaken in the exercise by the Regional Director of the visitorial and enforcement power as representative of the Secretary of Labor and Employment. Subject of the investigation were six (6) cooperatives supplying labor and other services to Dole Philippines, namely (1) the Adventurer’s Multi-Purpose Cooperative, (2) Human Resource Multi-Purpose Cooperative; (3) Cannery Multi-Purpose Cooperative; (4) the Polomolok Skilled Workers Multi-purpose Cooperative; (5) Unified Engineering and Manpower Service Multi-Purpose Cooperative; and (6) the Tibud Sa Katibawasan Multi-Purpose Cooperative.

After the conduct of the government investigation, more particularly on October 19, 1993, then Regional Director Henry Parel of the Department of Labor and Employment Region XI, issued an Order, the dispositive portion of which provides:

“WHEREFORE, premises considered, Adventurer’s Multi-Purpose Cooperative, Human Resource Multi-Purpose Cooperative and Cannery Multi-Purpose Cooperative are hereby declared to be engaged in labor only contracting which is a prohibited activity. The same cooperatives are therefore ordered to cease and desist from further engaging in such activities.

The three (3) cooperatives, namely Polomolok Skilled Workers Multi-purpose Cooperative, Unified Engineering and Manpower Service Multi-Purpose Cooperative and Tibud sa katibawasan Multi-Purpose Cooperative whose activities may not be directly related to the principal business of Dole Philippines, Inc. are also advised not to engage in labor only contracting with the company.”

As may be gleaned from the dispositive portion of the Order, three (3) cooperatives were found to be engaged in the illegal activity of labor-only contracting and were ordered to cease and desist therefrom. On the other hand three (3) other cooperatives were forewarned not to engage in such illegal activity. Upon appeal by the affected cooperatives to the Office of the Secretary, then Undersecretary Cresencio Trajano issued an Order dated September 15,

1994, affirming the Order dated October 19, 1993 of Regional Director Parel and dismissed the appeal.

The Order of Regional Director Parel, as affirmed by Undersecretary Trajano precipitated a flurry of litigation. Thus, several complaints for regularization, illegal dismissal and money claims (including Ababon et. al. vs. Dole Philippines, Inc. docketed as Case No. RABXI-0950261-96; Esteva et. Al. vs. Dole Philippines, Inc. Initially docketed as NLRC Case No. RAB-XI-12-50364-96;

Bayobay et. al. vs. AMCOOP, CAMPCO et. al. docketed as Case No. RABXI-12-01317-99) were filed by cooperative contract workers before the labor arbiter of the Sub-Regional Arbitration Branch No. XI of the National Labor Relations Commission (NLRC), a quasi-judicial body which exercises jurisdiction in labor cases with claims for regularization and illegal dismissal at the first instance. All said cases were dismissed with finality by the courts, save for the Esteva case which case eventually came to be entitled Dole Philippines, Inc. vs. Esteva et.al., docketed as G.R. No. 16115 before the Supreme Court.

It is the ruling by the Supreme Court in the Esteva case that the ILRF has presented before the USTR Sub-Committee in claiming that there should be compliance with the cease and desist orders. What has remained unstated is the fact that in the course of the litigations that followed the rendition of the government investigation, the three cooperatives found to have engaged in the illegal activity of labor-only contracting had ceased and desisted therefrom and had taken steps to comply with all governmental requirements imposed upon legitimate and lawful service providers. Thus, subsequent verification and records have revealed that "as early as November 14, 1997, a Certificate of Registration as Job Contractor had already been issued to the cooperatives by the then Regional Director Ms. Brenda Villafuerte, pursuant to the newly issued Department Order No. 10, Series of 1997". Thereafter, a series of investigation were conducted by the Department of Labor to ensure compliance with the requirements for legitimate job contracting. On October 13, 1999, Department of Labor and Employment Sheriff Nilo R. Mate rendered a report, addressed to yet again new Regional Director Manuel C. Roldan, as follows:

"According to Mrs. Villegas and staff of the two cooperatives, since early 1997 when their cooperatives were registered under Department Order No. 10 they no longer engaged in labor only contracting. They are now possessed with substantial capital and investments. Attached herewith are pertinent Xerox copies of documents."

Again, on September 5, 2005 a Narrative Report was submitted by Assistant Regional Director Cyril L. Ticao and Supervising Labor and Employment Officer Edwin T. Morales, who were tasked by then Regional Director Lourdes M. Trasmonte to conduct another investigation and/or verification of the different cooperatives/contractors operating in Dole Phils. Inc. located at Cannery, Polomolok, South Cotabato relative to the same Administrative Case No. R1100-

9310-RI-355 entitled IN RE: Investigation conducted among cooperatives at Dole Philippines, Inc. relative to labor-only contracting activities, which found that:

“In view of the foregoing, the said cooperatives are not engaged in labor-only contracting and it is recommended that Case No. R1100-9310-RI355 be closed and terminated without prejudice.”

Then again on July 3, 2007, the current Regional Director Ms. Gloria A. Tango issued an Order in the same Administrative Case No. R1100-9310-RI-355 declaring:

“In view of the foregoing findings and evaluation of the activities of these cooperatives, it is clear that they are complying with the provisions of Department Order No. 18-02 (which amended Department Order No. 10) and are legitimate job contractors. Aside from having substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of their business, they carry on an independent business and undertake the contract work on their own account under their own responsibility according to their own manner and method, free from the control and direction of the employer or principal in all matters connected with the performance of the work except as to the results thereof.

WHEREFORE, premises considered, Cannery Multi-Purpose Cooperative (CAMPCO), Unified Engineering & Manpower Services Multi-Purpose Cooperative (UNIFIED), Adventurer’s Multi-Purpose Cooperative (AMPCOOP), Polomolok Skilled Workers Multi-Purpose Cooperative (PSWMC) and Tibud Sa Katibawasan Multi-Purpose Cooperative (TIBUD) are declared to be legitimate job contractors and the herein case is hereby ordered CLOSED AND TERMINATED.”

On complainants’ reinstatement without loss of seniority rights and with full backwages up to date of reinstatement in the Esteva case, the Company has since complied with the Decision of the Supreme Court dated November 30, 2006. Given the foregoing, as earlier stated, the matter of the cease and desist orders have long been finally settled, closed and terminated.

**3. What is the unemployment rate in Mindanao compared to that of other parts of the Philippines?**

Presented is the matrix of unemployment and under-employment rates in the Mindanao area as compared to the rest of the Philippines.

## Underemployment and Unemployment Rate (%)

January 2006 to July 2008

Period	Philippines		Mindanao	
	Underemployment	Unemployment	Underemployment	Unemployment
2006	22.6	8.0	26.0	5.4
2007	20.1	7.3	23.8	5.2
2006-2007 (annual average)	21.3	7.6	24.9	5.3
July 2007	22.0	7.8	25.2	5.8
July 2008	21.0	7.4	25.1	4.8

It is significant to note from the foregoing matrix that while unemployment in Mindanao may seem low, particularly revealing of the true labor problem is the under-employment rate of the entire country that is not only by itself unacceptable, but further that shows Mindanao to have a significantly higher under-employment rate than the rest of the country. This under-employment problem is greatly exacerbated by a communist insurgency as well as a Muslim secessionist movement that has spawned terrorism aided and abetted effectively, by such known terrorist group as the Al Qaeda. Mindanao needs all the help that it can get.

The inclusion of pineapple juice as GSP eligible pursuant to the application of DOLE Philippines Inc. would go a long way to promoting full time wage employment and alleviating the dire economic situation prevalent in the region. Presently, Dole Philippines Inc. directly employs 5,401 regular employees, up from 4,834 in 2004 and 4,462 in 2000 regular employees. It is foreseen that flowing from the grant of the application, an increase of 2,000 jobs in Mindanao through the production chain, including the growing, harvesting and processing of pineapple juice, would be attained.

4. **Can you describe the employment prospects for the typical resident of Mindanao?**

Mindanao is predominantly agricultural with a dearth of industries that would provide much needed full time wage employment opportunities for its residents. Having predominantly agricultural economy, employment in Mindanao is usually seasonal.

According to Mindanao Economic Development Council (MEDCO) Chairman Virgilio Leyretana, Sr., Mindanao's economy is likely to grow in 2008 due to sustained growths in agricultural crop production, exports and investments. Production of agricultural products in Mindanao continues to be remarkable in its performance for the 1st Semester 2008 due to the fact that the island is within the typhoon-free zone.

Mindanao's total export earnings during the first six months of 2008 grew by 26.38 percent. Moreover, the PhP 4.289 Billion worth of investments in Mindanao for the 1st Semester 2008 registered with the Board of Investments (BOI) created at least 3,617 jobs.

And with the Philippine Information and Communications Technology (ICT) industry growing by 30 to 35 percent annually and a projection of 1 million jobs generated by 2010, key players in the Philippine Business Process Outsourcing (BPO) industry and academe are pushing for a comprehensive and sustainable training program that will develop Mindanao's human resources on ICT.

In September 2008, the Technical Education and Skills Development Authority (TESDA) and the Department of Education (DepEd) held the first ever jobs fair for Muslim Filipinos.

**5. How much have poverty and the poor economic prospects faced by Mindanao residents contributed to terrorism and unrest in the region?**

Extreme poverty, political marginalization, and social exclusion experienced by the minority Muslim population are said to continue to breed a sense of grievance that feeds the armed conflict in Muslim Mindanao. Based on the results of the 2006 survey, poverty incidence for families increased to 38.8 percent in Mindanao, compared to 37.7 percent in 2003. The poverty incidence for families in Mindanao is also higher compared to Visayas (33 percent) and Luzon (20 percent). Out of the total poor families, 33 percent are from Mindanao. The island also recorded the highest poverty incidence of 45.5 percent among population, and accounted for 32.4 percent of total poor population of the country (Table 2).

Further, six out of the ten poorest provinces are located in Mindanao. These are Tawi-tawi, Zamboanga del Norte, Maguindanao, Surigao del Norte, Lanao del Sur and Misamis Occidental. Tawi-Tawi was the poorest province in 2006 with 8 out of 10 families classified as poor (Table 3).

Mindanao remains predominantly agricultural and it is important to further translate agricultural growth and development in improving the welfare of the people. According to the Asian Development Bank, the average income of the poor in agriculture is about 84.5 percent of the poverty line, and inequality is highest among families who rely in agriculture and fisheries as a source of livelihood.

While the regional gross domestic product (GRDP) of all regions in Mindanao increased in 2007, their aggregate share is less than 20% of GRDP. Per capita GRDP is lowest in ARMM and in Caraga (Tables 4-7).

The above notwithstanding, there are other factors such as cultural considerations, which contribute to terrorism and unrest in the region.

**6. The International Labor Rights Forum believes that the Philippines criminal libel statute may be used as an anti-union tool – for example, during contact negotiations. Could you discuss your government’s view of this allegation?**

Freedom of association and freedom of speech and of expression are rights guaranteed under the Bill of Rights embodied in the Philippine Constitution. The basic freedoms of speech and of expression have their lawful limitations.

The Supreme Court has said that “...the freedom to express one’s sentiments and belief does not grant one the license to vilify in public the honor and integrity of another. Any sentiments must be expressed within the proper forum and with proper regard for the rights of others.” x x x “Malice, which is the doing of an act conceived in the spirit of mischief, of criminal indifference to the rights of others or which must partake of a criminal or wanton nature, is presumed from any defamatory imputation, particularly when it injures the reputation of the person.” (Lucas vs. Roco, 344 SCRA 481).

Criminal libel law is not unique to the Philippines and exists in other more developed jurisdictions.

What is more, criminal libel law is in essence treated as a relatively minor offense within the Philippine jurisdictions. In a series of recent decisions (Brillante vs. Court of Appeals et.al. 474 SCRA 480; Buatis, Jr. vs. People of the Philippines, 484 SCRA 275), the Philippine Supreme Court has established the emergence of a clear pattern of preference for the imposition of only a fine rather than imprisonment in libel cases.

Not only is libel such a relatively minor offense but more significantly, the exercise of trade union rights is amply protected by the Philippine Constitution and existing Laws. In truth and in fact, there has been no case in point

presented where a person has been criminally penalized for libel for and in connection with the exercise of his legitimate union rights.

- 7. Would you provide a summary of the Comprehensive Agricultural Reform Project (CARP) and information on its original goals? When the program was extended, were there any significant changes to it? In particular, we are interested in any information or changes that relate to the allegations by ILRF that Dole Philippines has misused the program to the detriment of landless peasants who were originally intended to benefit from the program.**

Many of our Philippine pineapple growers including those who are recipients of the land distribution scheme of the Comprehensive Agrarian Reform Program (CARP) in Mindanao stand to benefit from the grant of GSP treatment of this item.

*(Additional Philippine Government response to follow.)*

- 8. The U.S. Government has expressed concern about the unstated “no union/no strike” policy in Export Processing Zones in the Philippines. Has the Government of the Republic of the Philippines taken any concrete steps to promote the rights of EPZ workers to associate?**

The Philippines unequivocally declares that there is no such “no union/no strike policy” in Export Processing Zones in the Philippines. Trade unions in these zones have in fact increased from 251 in 2000 to 341 as of September 2005 with a membership increase from 23,000 in 2000 to nearly 34,000 in 2005. Moreover, Unions in special economic zones have registered an increase of 3% from 2006 to 2007. The steady growth in the percentage of unionization levels in the zones clearly belies a supposed no union/no strike policy in the Export Processing Zone.

- 9. What is the Status of the ILO request for a high-level mission to the Philippines?**

In reaction to alarming reports on extra-judicial killings, the Government had earlier constituted an Independent Commission to address Media and Activist killings (i.e. the Melo Commission). After the Melo Commission had rendered its report, the President had instructed the Department of Foreign Affairs to submit a formal proposal to the European Union, Spain, Finland and Sweden to assist the Melo Commission. Further to the President’s instructions, a request for assistance was in fact made and the European Union sent a need assessment Mission to the Philippines to determine what possible technical assistance could

be rendered to the Philippines. The specific and concrete response to the government's request for technical assistance is presently being threshed out.

Last 25 April 2008, Ms. Cleopatra Doumbia-Henry, Director of the ILO International Labor Standards Department, personally conferred with Department of Labor and Employment on the matter of the Philippines acceptance of the proposed mission. The Department was advised that the mission intends to meet with a number of concerned agencies and social partners to clarify issues and identify areas in which ILO could provide support assistance.

Consultations with the social partners (the Employers' Confederation of the Philippines (ECOP) and the Trade Union Congress of the Philippines (TUCP), the judiciary and legislative branches of the GRP, as well as the different government instrumentalities that the Mission would wish to visit is currently being conducted.

The social partners have differing views on the matter which the GRP has to consider. The GRP has just been informed by ITUC's Philippine affiliates (TUCP and the Federation of Free Workers) of the creation of an Independent Fact-Finding Investigation of their own so they could probe deeper on the allegations of extra-judicial killings of trade unionists.

**The Philippines categorically declares that it is not averse to accepting the ILO high level mission. Given, however, the political and economic climate now prevailing in the country today, coupled with the ongoing efforts related to the matter, the GRP respectfully submits that it is best that the coming of the high level mission be for the meantime held in abeyance pending results of the consultations.**

By way of comment to the specific allegations made in connection with the application for GSP eligibility by Dole Philippines raised by the ILRF, the GRP states that:

***Allegations of violation of the right to self-organization.*** With respect to ILRF allegations of violation of recognized international labor rights by the GRP, it is hereby categorically submitted that the GRP does not have any policy of acting against its citizens for their beliefs nor for actions in the exercise of their labor rights. All forms or expression of the right to self-organization are rights guaranteed under the GRP Constitution and the Labor Code, subject only to the condition that the exercise thereof must not be contrary to law, morals, public order and public policy.

Specific to Dole Philippines, we have been informed that the company has responded to the ILRF allegations. But the allegation that the company's workforce is prevented from fully enjoying the benefits of the internationally recognized workers' rights, including the right to freedom of association and the right to acceptable conditions at work, could not be reconciled with the fact Dole Philippines has been an organized (unionized) establishment since the 1960s. In

fact, the bargaining agent in the company since 1988 has consistently been aligned with the militant Kilusang Mayo Uno (KMU). Since 2001 until the present, the bargaining agent has been Amado Kadena-National Federation of Labor Unions or AK-NAFLU-KMU.

It is, likewise, not correct to conclude that workers under contract or from a service contractor are denied the right to join unions. The right to form, assist or join unions is accorded to all types of employment engagement. They may form their own union or they may be members of the bargaining unit being represented by the incumbent bargaining agent. But the scope of the bargaining units is determined or defined by the unions themselves through a petition for certification election and once defined, its expansion or modification has to be agreed upon by the parties themselves. In the case of Dole Philippines, the AK-NAFLU-KMU's bargaining unit covers only the **regular and seasonal rank-and-file employees**, thus, automatically excluding employees under direct contract or on probationary contract.

Workers under direct contract, however, are not precluded from forming their own bargaining unit. Workers under a service contractor can also form their own bargaining unit. Organizing the workers under a service contractor, even if they are under a cooperative subcontractor, has in fact been facilitated by the requirement to provide the union of the company a copy of the engagement between the service provider and its workers.

A facilitative atmosphere for the exercise of workers' right to self-organization has been further strengthened with the recent enactment of Republic Act 9481, which makes unionization easier as registration is not a requirement for initiating a petition for certification election, and there is a provision in the same law on non-disclosure of officers and members of the union to preclude possible harassments, coercion or intimidation by the employer during the organization stage of the union.

The GRP ensures protection and the free exercise of the right to self-organization. It cannot however promote union organization, which function rightfully belongs to the unions themselves.

***Allegation of below minimum wage payment or violation of labor standards and alleged weak labor law enforcement.*** On the allegations of below minimum wage for outsource labor, the GRP will investigate the matter. Up to this date, however, no complaint for such violation has been received from any worker on the matter. Dole Philippines is covered by the Self-Assessment scheme of the Labor Standard Enforcement Framework of the Department of Labor whereby the company and AK-NAFLU-KMU are required to check and ensure their compliance with minimum labor and occupational health and safety standards at the plant level.

***Allegations that both the GRP and Dole Philippines are undertaking significant efforts to intimidate and harass workers and AK-NAFLU-KMU.***

The allegations blur the line between legitimate trade union activities and insurgency related political activities either by front organizations or directly by the armed wing of the Communist Party of the Philippines (CPP), which is the New People's Army (NPA). The presence of the Armed Forces of the Philippines in the area is not to intimidate or harass members of the AK-NAFLU-KMU, but to foil Communist insurgents or the NPA's extortion activities, which include the burning of business machineries and offices of companies who refused to pay the so-called "revolutionary taxes".

Legitimate trade union activities are not the AFP's concern. Although there have been reports of AK-NAFLU-KMU members joining or aiding NPA attacks or NPA armed partisans claiming to be members of AK-NAFLU-KMU, the AFP information drive is not directed against AK-NAFLU-KMU per se. The same is a counter-effort to the NPA's terroristic activities and recruitment drive in the area. Records clearly show that the AK-NAFLU-KMU is a strong organization by itself and KMU affiliates have been the bargaining agent in Dole Philippines since 1988.

***Allegations of Dole Philippines harassment of AK-NAFLU-KMU.*** On the libel case against a union/officer, the same is already filed in Court and to say something on the matter would be *sub-judice*. Its merits has to take its normal course in the proceedings before said court. On the so-called vexation claims against the union, it has been determined that the complainants are a majority of the union members of AK- NAFLU-KMU and the nature of the complaints are intra-union issues particularly violations of the members' rights such as audit of union funds, excessive dues collection, and skimming of P2.00 to P2.50 per kilo of the 25 kilogram Rice Allowance due to the union members.

**END.**