

**EUROPEAN COMMUNITIES – CUSTOMS CLASSIFICATION  
OF FROZEN BONELESS CHICKEN CUTS**

Understanding between Brazil and the European Communities  
Regarding Procedures under Articles 21 and 22 of the DSU

The following communication, dated 26 July 2006, from the delegation of Brazil and the delegation of the European Communities to the Chairman of the Dispute Settlement Body, is circulated at the request of these delegations.

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Brazil and the European Communities would like to inform the Dispute Settlement Body of the attached "Understanding between Brazil and the European Communities" with respect to the dispute *European Communities – Customs Classification of Frozen Boneless Chicken Cuts* (WT/DS269).

**Understanding between Brazil and the European Communities**

Noting the Status Reports by the European Communities (WT/DS269/15 and WT/DS269/15/Add.1) and the statements of the parties to the Dispute Settlement Body (DSB) relating to this dispute,

Having regard to the fact that the European Communities considers that by adopting and applying Commission Regulation (EC) No 949/2006 it has fully complied with the DSB recommendations and rulings in this dispute within the reasonable period of time granted to it under Article 21.3(c) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU),

Mindful that Commission Regulation (EC) No 949/2006 was enacted on the last day of such reasonable period of time and considering that Brazil still has doubts on compliance and believes it necessary to have the opportunity to assess whether the referred Regulation, as such and as applied, conforms to such recommendations and rulings, Brazil and the European Communities ("the parties to the dispute") have agreed on the following procedures for the exclusive purposes of this dispute:

1. Should Brazil consider that the situation described in Article 21.5 of the DSU exists, Brazil will request consultations which the parties to the dispute will hold within 12 days from the date of circulation of such request. The parties to the dispute agree that at the end of such period for consultations, should either party so state, the parties to the dispute will immediately and jointly consider that such consultations have failed to settle the dispute.

Consequently, Brazil is entitled at any time to request the establishment of a panel pursuant to Article 21.5 of the DSU.

2. At the first DSB meeting at which Brazil's request for the establishment of an Article 21.5 panel appears on the agenda, the European Communities shall accept the establishment of that panel.
3. The parties to the dispute shall cooperate to enable the Article 21.5 panel to circulate its report within 90 days of the panel's establishment, excluding such time during which the panel's work may be suspended pursuant to Article 12.12 of the DSU.
4. Either party to the dispute may request the DSB to adopt the report of the Article 21.5 panel at a DSB meeting held at least 20 days after the circulation of the report to the Members unless either party appeals the report. If a party to the dispute has notified its decision to appeal, the report by the Article 21.5 panel shall not be considered for adoption by the DSB until after completion of the appeal.
5. In the event of an appeal against the Article 21.5 panel report, the parties to the dispute shall cooperate to enable the Appellate Body to circulate its report to the Members within no more than 60 days from the date of notification of the appeal to the DSB.
6. In the event of an appeal, either party to the dispute may request the DSB to adopt the reports of the Appellate Body and the Article 21.5 panel (as modified by the Appellate Body report) at a DSB meeting held within 30 days of the circulation of the Appellate Body report to the Members.

7. Brazil shall not request authorization to suspend concessions or other obligations under Article 22 of the DSU until the adoption by the DSB of the Article 21.5 panel report and, where relevant, the Appellate Body report.
8. If the DSB adopts recommendations and rulings that measures taken by the European Communities to comply with the prior recommendations and rulings of the DSB do not exist or are inconsistent with a covered agreement, Brazil has the right under Article 22.2 of the DSU to request negotiations with the European Communities with a view to developing mutually acceptable compensation, and to request authorization from the DSB to suspend concessions or other obligations pursuant to Articles 22.2 and 22.6 of the DSU.
9. Subject to paragraphs 7 and 8, Brazil has the right to request the DSB authorization referred to therein at any future date. The European Communities shall not assert that Brazil is precluded from obtaining such DSB authorization on the grounds that the request was made outside the 30-day time-period specified in Article 22.6 of the DSU.
10. The European Communities retains the right to object to the level of suspension proposed, or to claim that the principles and procedures set forth in Article 22.3 of the DSU have not been followed, and to have the matter referred to arbitration under Article 22.6 of the DSU.
11. The parties to the dispute will cooperate to enable the arbitrator under Article 22.6 of the DSU to circulate its decision within 60 days of the referral to arbitration.
12. The parties to the dispute will cooperate to facilitate the participation of the original panelists in the Article 21.5 compliance panel and the Article 22.6 arbitration.
13. If any of the original panelists is not available for either the Article 21.5 compliance panel or the Article 22.6 arbitration (or both), the parties to the dispute will immediately request the Director-General of the WTO to appoint, within five days of being so requested, a replacement for the proceeding or proceedings in which a replacement is required. If an original panelist is unavailable to serve in either of the proceedings, the parties to the dispute will further request that, in making this appointment, the Director-General seek a person who will be available to act in both proceedings.
14. The parties to this dispute will continue to cooperate in all matters related to this Understanding and not to raise any procedural objection to any of the steps set out herein. If, during the application of these procedures, the parties to the dispute consider that a procedural aspect has not been properly addressed in this Understanding, they will endeavour to find a solution within the shortest time possible that will not affect the other aspects and steps agreed herein.

Signed in Geneva, 26 July 2006:

(signed)  
H.E. Mr Clodoaldo Hugueney  
Ambassador  
Permanent Representative of Brazil

(signed)  
H.E. Mr Carlo Trojan  
Ambassador  
Permanent Representative  
for the European Communities