

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

Notification of an Other Appeal by Thailand
under Article 16.4 and Article 17 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU),
and under Rule 23(1) of the Working Procedures for Appellate Review

The following notification, dated 27 June 2005, from the Delegation of Thailand, is being circulated to Members.

Pursuant to Article 17.4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "DSU") and Rule 23 of the Appellate Body's Working Procedures for Appellate Review, Thailand hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report *European Communities – Customs Classification of Chicken Cuts*, WT/DS286/R, (the "Panel Report") and certain legal interpretations developed by the Panel in that Report.

Thailand seeks appellate review of:

- (a) the Panel's findings and conclusion set out in paragraphs 7.25–7.32, that EC Regulation No. 1871/2003 and EC Regulation No. 2344/2003 are outside its terms of reference;
- (b) the Panel's findings and conclusion, set out in paragraphs 6.17, 6.18, 7.36 and 7.37, that the products included in the Panel's terms of reference are limited to frozen boneless chicken cuts impregnated with salt, with a salt content of 1.2%- 3%;
- (c) the Panel's findings and conclusion, set out in paragraph 7.223, that all the "Explanatory Notes" of the Harmonized System cited by Thailand are "non-binding" and do not further clarify the interpretation of the concession in heading 02.10 of the EC Schedule; and,
- (d) the Panel's findings and conclusion, set out in paragraph 7.238, that General Rule for the Interpretation of the Harmonised System 3 ("General Rule 3") is not applicable.

The above findings and conclusions are based on the following legal errors:

- the Panel's error in determining the scope of its terms of reference with respect to the measures at issue based on its interpretation, *inter alia*, that Thailand's panel request was not broad enough in its formulation to include EC Regulation No. 1871/2003 and EC Regulation No. 2344/2003. (paras. 7.16–7.32 of the Panel Report);

- the Panel's error in determining the scope of its terms of reference with respect to the products at issue by interpreting that the product at issue is determined by the measures the Panel considered to be within its terms of reference and not by the product described by Thailand in its request for the establishment of a panel. (paras. 7.36 and 7.37 of the Panel Report);
- the Panel's error in applying Article 31 of the Vienna Convention on the Law of Treaties with respect to its analysis of relevant aspects of the Harmonized System for the interpretation of the concession in heading 0210 of the EC Schedule. In particular, Thailand considers that the Panel erred in finding that the HS Explanatory Notes to heading 02.10 and Chapter 2 and the Note to Chapter 16 are not helpful to clarify the ordinary meaning of the term "salted" in the concession contained in heading 02.10 of the EC Schedule. Thailand also considers that the Panel incorrectly characterised the Note to Chapter 16 as an Explanatory Note when it is in fact a Chapter Note that forms part of the Harmonized System and is therefore binding. (paras. 7.206–7.223 of the Panel Report); and
- the Panel's error in deciding not to apply General Rule 3. The Panel improperly relied on the parties' position that – in their view – the product at issue does not fall *prima facie* under two or more headings and consequently erred in failing to provide its own analysis of whether the product at issue *prima facie* falls under two or more headings. (paras. 7.224–7.241.)

Thailand requests the Appellate Body to review the above findings or conclusions of the Panel. The provisions of the Marrakesh Agreement Establishing the WTO that Thailand considers the Panel to have erroneously interpreted or applied are heading 0210 of the EC Schedule read in conjunction with Article II:1(a) and II:1(b) of the GATT 1994, as well as Article 3.7, 6.2 and Article 7 of the DSU.
