

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

Notification of an Other Appeal by Brazil  
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 Brazil, is being circulated to Members.

Pursuant to Articles 16 and 17 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) and Rule 23 of the Working Procedures for Appellate Review, Brazil hereby notifies its decision to appeal certain issues of law and legal interpretation contained in the Panel report in *European Communities – Customs Classification of Frozen Boneless Chicken Cuts* (WT/DS269/R).

Brazil seeks appellate review of:

- 1) *The Panel's Term of Reference*
  - a) The Panel's conclusion that EC Regulation No. 1871/2003 and EC Regulation No. 2344/2003 are measures outside the Panel's terms of reference<sup>1</sup> based, *inter alia*, on its interpretation that Brazil's Panel request was not broad enough to include EC Regulation No. 1871/2003 and EC Regulation No. 2344/2003.<sup>2</sup> This conclusion was based on an erroneous interpretation of Articles 6.2 and 7 of the DSU.
  - b) The Panel's conclusion that the product within its terms of reference is "*frozen boneless chicken cuts impregnated with a salt content of 1.2%-3%*".<sup>3</sup> In particular, the Panel's interpretation that the product at issue is determined by the measures considered by the Panel to be within its terms of reference and not by the product described in Brazil's Panel request<sup>4</sup> is not consistent with Articles 6.2 and 7 of the DSU.
- 2) *Contextual Interpretation of the EC Schedule: Harmonized System (HS)*

<sup>1</sup> Panel Report, paras. 6.15 and 7.32.

<sup>2</sup> Panel Report, paras. 6.9, 6.13, 7.28 and 7.29.

<sup>3</sup> Panel Report, paras. 6.16-6.18 and 7.36.

<sup>4</sup> Panel Report, paras. 6.18 and 7.36.

- a) The Panel's conclusion that the evolution of the terms and structure of Chapter 2 of the Harmonized System (HS) do not clarify the meaning of the concession contained in heading 0210 of the EC Schedule,<sup>5</sup> specifically in view of its finding that the evolution of the terms and structure does not indicate that the predecessor to HS heading 0210 was characterized by the notion of "preparation" and not "preservation".<sup>6</sup>
- b) The Panel's conclusion that the HS Notes and Explanatory Notes do not clarify the meaning of the concession contained in heading 0210 of the EC Schedule.<sup>7</sup> In particular, the finding that the HS Explanatory Notes to heading 0210 and Chapter 2 and the HS Notes to Chapter 16 do not help in the interpretation of heading 0210 because the terms "preparation" and "preservation" may not be mutually exclusive in the context of heading 0210.<sup>8</sup>
- c) The Panel's decision not to apply General Rule 3 in the interpretation of heading 0210 based on its improper reliance on and acceptance of the parties' alleged position that - within their analysis - the products at issue are not *prima facie* classifiable under two or more headings.<sup>9</sup>
- d) The Panel's overall conclusion that the HS does not further clarify the interpretation of the concession contained in heading 0210 of the EC Schedule, in so far as this conclusion was based on the Panel's flawed interpretations of the evolution of the terms and structure of HS Chapter 2; the HS [Explanatory] Notes to Chapter 2, heading 0210 and Chapter 16; and the application of General Rule 3.<sup>10</sup>

Brazil requests that the Appellate Body reverse the conclusions and findings listed above. In the event the Appellate Body reverses the Panel's decision not to apply General Rule 3, Brazil requests that the Appellate Body complete the legal analysis by examining Brazil's claim that the application of General Rule 3 leads to the classification of the product under heading 0210 on the basis of the Panel's factual findings and the facts on the record.

The provisions of the WTO Agreement that Brazil considers the Panel to have erroneously interpreted or applied are Articles 6.2 and 7 of the DSU and heading 0210 of the EC Schedule read in conjunction with Articles II:1(a) and II:1(b) of the GATT 1994.

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<sup>5</sup> Panel Report, para. 7.205.

<sup>6</sup> Panel Report, paras. 7.204 and 7.205.

<sup>7</sup> Panel Report, paras. 7.223.

<sup>8</sup> Panel Report, paras. 7.222 and 7.223.

<sup>9</sup> Panel Report, paras. 7.238 and 7.241.

<sup>10</sup> Panel Report, Para. 7.241.