

EUROPEAN COMMUNITIES - MEASURES AFFECTING THE
IMPORTATION OF CERTAIN POULTRY PRODUCTS

Notification of an Appeal by Brazil under
paragraph 4 of Article 16 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU)

The following notification, dated 29 April 1998, sent by Brazil to the Dispute Settlement Body (DSB), is circulated to Members. This notification also constitutes the Notice of Appeal, filed on the same day with the Appellate Body, pursuant to the *Working Procedures for Appellate Review*.

Pursuant to paragraph 4 of Article 16 of the Understanding on Rules and Procedures Governing the Settlement of Disputes and Rule 20 of the Working Procedures on Appellate Review, Brazil hereby notifies its decision to appeal to the Appellate Body certain issues of law covered, and legal interpretations developed, in the panel report on *European Communities - Measures Affecting the Importation of Certain Poultry Products* (WT/DS69/R, dated 12 March 1998).

Brazil requests that the Appellate Body review a number of errors of law and legal interpretation developed by the Panel in this report. The errors of law and legal interpretations to be reviewed include the following:

1. the Panel erred in its application of customary rules of interpretation of international law, within the terms of Article 3(2) of the Dispute Settlement Understanding, to the Brazil EC Oilseeds Agreement concluded in 1993 within the terms of GATT Article XXVIII, in finding that the poultry tariff rate quota (TRQ) opened on the basis of that Agreement was not exclusively for the benefit of Brazil;
2. the Panel erred in its application of the same customary rules of interpretation of international law, within the terms of Article 3(2) of the DSU, to GATT Article XXVIII in finding that there is no provision in the WTO agreements in general, or in GATT Article XXVIII in particular, that allows departure from the MFN principle in the case of TRQs resulting from GATT Article XXVIII negotiations;
3. the Panel has not complied with its obligations to make an objective assessment of the matter before it in accordance with Article 11 of the DSU in that it did not examine the practice of Members which shows that TRQs for the benefit of individual Members are commonly agreed within the terms of GATT;

4. the Panel erred in its legal analysis, and application, of GATT Article XIII and in particular did not analyse the agreement between Brazil and the EC on allocation of the TRQ and in finding, on the basis of supplementary evidence only, that there was no specific agreement regarding the allocation of the TRQ;
 5. the Panel erred in its legal analysis, and application, of GATT Article XIII in respect of the rights and obligations of WTO Members in relation to non-Members in the administration of TRQs;
 6. the Panel erred in its legal analysis, and application, of GATT Article X and in particular in its finding that, as the rules for the importation of poultry products into the EC were of general application only, they did not apply to specific trade;
 7. the Panel erred in its application of the Agreement on Import Licensing Procedures to the case before it and in its finding that the Licensing Agreement only applies, in the particular case before it, to in-quota trade;
 8. the Panel erred in its legal interpretation of the Licensing Agreement that falling market share is not a relevant fact to be taken into consideration in analysing the question of distortion of trade and in finding that Brazil had not met the burden of proof required to show distortion of trade.
-