

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

Request for the Establishment of a Panel by Brazil

The following communication, dated 19 September 2003, from the Permanent Mission of Brazil to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 11 October 2002, Brazil requested consultations with the European Communities (EC) pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT 1994). That request was circulated to the WTO Members on 16 October 2002 as document WT/DS269/1, "European Communities – Customs Classification of Frozen Boneless Chicken Cuts". On 5 December 2002 and on 19 March 2003, Brazil and the EC held consultations in Geneva with a view to reaching a mutually agreed solution. Unfortunately, consultations failed to settle the dispute.

Therefore, Brazil hereby requests that a Panel be established pursuant to Article 6 of the DSU and Article XXIII of the GATT 1994, with standard terms of reference as set out in Article 7 of the DSU.

The specific measures at issue are Commission Regulation (EC) No. 1223/2002, published in the Official Journal of the EC on 9 July 2002, concerning the classification of certain goods in the Combined Nomenclature (CN), and the EC Commission Decision, published in the Official Journal of the EC on 12 February 2003, concerning the validity of certain binding tariff information (BTI) issued by the Federal Republic of Germany.

Regulation No. 1223/2002 provides a new description for the product under the CN code 0207.14.10. By virtue of Regulation No. 1223/2002, goods described as "Boneless chicken cuts, frozen and impregnated with salt in all parts. They have a salt content by weight of 1,2% to 1,9%. The product is deep-frozen and has to be stored at temperature of lower than -18°C to ensure a shelf-life of at least one year." are now classified under CN code 0207.14.10. Products under CN code 0207.14.10 are subject to a tariff of 102.4 €/100kg/net.

Prior to Regulation No. 1223/2002, the product "boneless chicken cuts, frozen and impregnated with salt in all parts", was classified as salted meat under CN code 0210.99.39. Products under CN code 0210.99.39 are subject to an *ad valorem* duty of 15.4%. Subsequent to the issuance of Regulation No. 1223/2002, the Commission of the EC published a Decision addressed to the Federal Republic of Germany reporting that all BTIs previously issued by Member States, which classified the products concerned as salted meat of CN code 0210, ceased to be valid. In particular, this Decision informed that Germany had erroneously issued BTIs classifying frozen products

containing between 1.9% and 3% of salt under CN code 0210. The reason given was that products "consisting of boneless chicken cuts which have been frozen for long-term conservation and have a salt content of 1.9% to 3% are similar to the products covered by Regulation (EC) No. 1223/2002". According to the Commission of the EC, "[t]he addition of salt in such quantities is not such as to alter the products' character as frozen poultry meat of heading 0207". Thus, the Commission Decision instructed Germany to withdraw the BTIs issued on frozen poultry meat containing between 1.9% and 3% of salt.

As a result of these measures, the product boneless chicken cuts, frozen with a salt content of 1.2% or more, which was previously classified as salted meat, is now classified as frozen chicken, subject to a tariff rate in excess of the bound rate for salted meat in the EC's Schedules under GATT 1994.

Accordingly, Brazil considers that its commerce of salted chicken to the EC has been accorded treatment less favourable than that provided in the EC Schedule for the product, in contravention of the EC's obligations under Articles II:1(a) and II.1(b) of the GATT 1994. These EC measures produce distortions in trade, which nullify and impair, within the meaning of GATT Article XXIII, benefits accruing to Brazil under the GATT 1994.

Brazil asks that this request for the establishment of a Panel be placed on the agenda of the next meeting of the Dispute Settlement Body, which is scheduled to take place on 2 October 2003.
