

ANNEX E

REQUESTS FOR THE ESTABLISHMENT OF A PANEL

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ANNEX E-1

REQUEST FOR THE ESTABLISHMENT OF PANEL BY BRAZIL

**WORLD TRADE
ORGANIZATION**

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EUROPEAN COMMUNITIES – CUSTOMS CLASSIFICATION OF

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.

Prior to Regulation 1223/2002, frozen boneless chicken cuts impregnated with salt in all parts were 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 1223/2002, the EC Commission published a Decision addressed to the Federal Republic of Germany noting that BTIs previously issued by Member States which classified the products concerned as salted meat under heading 0210 ceased to be valid. The Decision further noted that Germany had subsequently issued BTIs classifying frozen boneless chicken cuts with a salt content of 1.9% to 3% under heading 0210. The Decision stated that "the products also consisting of boneless chicken cuts which have been frozen for long-term preservation and have a salt content of 1,9% to 3% are similar to the products covered by Regulation (EC) 1223/2002. The addition of salt in such quantities is not such as to alter the products' character as frozen poultry meat of heading 0207." Therefore, the Commission Decision instructed Germany to withdraw the BTIs issued on frozen poultry meat with a salt content between 1.9% and 3%.

As a result of this measure, the product classified as frozen boneless chicken cuts with a salt content of 1.2% or more, which was previously been classified as salted meat at the *ad valorem* rate of 15.4%, is now classified as frozen chicken subject to a tariff rate in excess of the bound rate for salted meat in the EC's Schedule of Concessions (Schedule LXXX) under the GATT 1994.