

ANNEX B-1

**THIRD PARTY SUBMISSION OF CHINA
EXECUTIVE SUMMARY**

(30 September 2004)

I. INTRODUCTION

1. China's third party submission deals with the following three issues:

(1) The Appellate Body in *EC* –

III. NO TEXTUAL BASIS OF THE EC'S INTERPRETATION OF HEADING 0210

3.1 Under the EC's Commission Regulation (EC) No. 1223/2002 of July 8, 2002 ("Regulation No. 1223/2002"), boneless chicken cuts, frozen and impregnated with salt in all parts, having a salt content by weight of 1.2 to 1.9% is classified under heading 0207.14.10 of the CN.

3.2 The ordinary meanings of the term "salted", as discussed by the parties to the dispute in their respective written submissions, does not clearly indicate that the salting process under heading 0210 must be intended for preservation purpose only.

3.3 In "context" examination for interpretation of Schedule LXXX, China notes that the explanatory notes to heading 0210 and chapter 2 of the *Harmonized System* and its *Explanatory Notes* are relevant to this case.

3.4 In explanatory note to heading 0210, there is no clear indication that salting under heading 0210 must be for long-term preservation purpose.

3.5 The only place in Chapter 2 of the *Harmonized System* and its *Explanatory Notes* that salting relates to preservation is in the explanatory note to Chapter 2.

3.6 The EC's Commission Regulation No. 1871/2003 of October 23, 2003 ("Regulation No. 1871/2003") provides that, according to the explanatory note to Chapter 2, the reasoning applied to fresh meat applies equally to frozen meat, i.e., fresh meat remains classified as fresh meat even if it has been packed with salt as a temporary preserving agent during transport.

3.7 The reasoning in Regulation No. 1871/2003 finds no clear textual basis in the *Harmonized System* and its *Explanatory Notes*.

3.8 First, the *Harmonized System* and its *Explanatory Notes* do not contain same or similar languages annex to terms "frozen" as the term "fresh".

3.9 Second, even if this reasoning applies equally to frozen meat, the only situation that chicken meat that has been both frozen and salted could be classified under heading 0207 is that the frozen chicken meat is "packed with salt as a temporary preservative during transport" rather than "impregnated with salt in all parts" with a minimum salt content of 1.2%.

IV. EC'S CLASSIFICATION PRACTICE AND LEGISLATION DURING THE URUGUAY ROUND NEGOTIATIONS

4.1 At the time of the Uruguay Round, the applicable classification legislation of the EC was Council Regulation (EC) No. 2658/87. Prior to the end of the verification process of Schedule LXXX, the EC published its Commission Regulation (EC) No. 535/94 on March 9, 1994 ("Regulation No. 535/94") to amend Annex I to Regulation No. 2658/87.

4.2 Regulation No. 535/94 defined the term of "salted" of heading 0210 of the CN as "meat or edible meat offal which has been deeply and homogeneously impregnated with salt in all parts, having a total content not less than 1.2% by weight".

4.3 Regulation No. 535/94 also stipulated that a total salt content of 1.2% or more by weight was an appropriate criterion for distinguishing between salted meat and fresh, chilled or frozen meat.

4.4 Regulation No. 535/94 was published within the verification period of Schedule LXXX, and entered into force on April 1, 1994 - right before the conclusion of the Uruguay Round negotiations.

It may be reasonable to expect that a regulation, promulgated by a member at the end of the Uruguay Round negotiation, has set out the criteria for classifying salted meat as adopted by that member during the Uruguay Round negotiations.

4.5 China notes that the definition of "salted" of heading 0210 as established by Regulation No. 535/94 remained in force in the CN until the adoption of Regulation No. 1223/2002.

ANNEX B -2

**THIRD PARTY ORAL STATEMENT OF THE UNITED STATES
AT THE FIRST MEETING OF THE PANEL**

(29 September 2004)

I. INTRODUCTION

1. Mr. Chairman and members of the Panel, thank you for providing the United States, as a third party in this proceeding, the opportunity to make a statement at this meeting of the Panel.

2. This dispute does not concern customs classification as such. Rather, this dispute concerns the tariff treatment by the European Communities ("EC") of frozen boneless chicken cuts from Brazil and Thailand, specifically whether the EC is providing tariff treatment to those products that is less favorable than that provided for in its schedule of tariff concessions for the Uruguay Round, Schedule

6. The EC now argues that, "[f]or Brazil and Thailand to prevail they must show that 'salty chicken' can be considered 'salted' for the purpose of the interpretation of the EC's schedule."¹ The EC asserts that Brazil and Thailand cannot prove their case, because, at the time the EC bound its tariff rate for heading 0210, "the figure of a 1.2% salt content was conceived of as a *minimum* salt content" and that "[i]t was never considered that the mere existence of a salt content of greater than 1.2% in itself made a product 'salted' for the purpose of 02.10."² Brazil and Thailand disagree that there was an understood criterion of long-term preservation associated with the term "salted" in the definition that existed in the EC's CN at the time Schedule LXXX was concluded, and believe that the EC's concession for heading 0210 covers the product they export.

7. Without taking a view on who is correct, the United States wishes to emphasize that the evidence of the meaning of the terms in the EC's CN before the EC concluded Schedule LXXX must be relevant to understanding what tariff concession the EC granted and, therefore, what the EC's obligations are under Article II of the GATT 1994. The Appellate Body noted in *European Communities – Customs Classification of Certain Computer Equipment* that the "only rules which may be applied in interpreting the meaning of a concession are the general rules of treaty interpretation set out in the *Vienna Convention*."³ The United States agrees that the term "salted" in heading 0210 must be examined pursuant to the customary rules of interpretation of public international law reflected in Article 31(1) of the *Vienna Convention*; that is, "in accordance with the ordinary meaning to be given to the term ...

European Communities during the Uruguay Round is part of 'the circumstances of [the] conclusion' of the WTO Agreement and may be used as a supplementary means of interpretation within the meaning of Article 32 of the Vienna Convention."⁶ Further, "If the classification practice of the importing Member at the time of the tariff negotiations is relevant in interpreting tariff concessions in a Member's Schedule, surely that Member's legislation on customs classification at that time is also relevant."⁷ Accordingly, recourse may be had to the 1994 CN note and the EC's classification practice to confirm the ordinary meaning of "salted" or to determine its meaning if its meaning is otherwise ambiguous or obscure.

III. CONCLUSION

11. This concludes my presentation. The United States appreciates this opportunity to present its views.

⁶ Appellate Body Report, *EC – Computer Equipment*, para. 92.

⁷ Appellate Body Report, *EC – Computer Equipment*, para. 94.