

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**

WT/DS269/3
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**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

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.

In the view of Thailand, its exports of salted chicken to the EC are being accorded treatment less favourable than that provided in the EC Schedule in contravention of the EC's obligations under Articles II:1(a) and II:1(b) of the GATT 1994. The EC measure creates distortions in trade that nullify or impair, within the meaning of Article XXIII, the benefits accruing to Thailand under the GATT 1994.

Thailand requests that a panel be established with standard terms of reference at the meeting of the Dispute Settlement Body to be held on 7 November 2003.
