

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

Request for Consultations by Brazil

The following communication, dated 11 October 2002, from the Permanent Mission of Brazil to the Permanent Delegation of the European Commission and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

Upon instruction from my authorities, I hereby wish to convey the request of the Government of Brazil for 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).

The measure at issue is EC Commission Regulation No. 1223/2002 (Regulation No. 1223/2002), of 8 July 2002, which provides a new description of the product under the Combined Nomenclature (CN) code 0207.14.10. This new description includes a salt content to the product that did not exist prior to Regulation No. 1223/2002 and subjects the imports of these products to a higher tariff than that applicable to salted meat (CN code 0210) in the EC's Schedules under GATT 1994.

Prior to Regulation No. 1223/2002, customs authorities in the EC have classified frozen, boneless cuts of poultry impregnated with salt in all parts, with a salt content by weight of 1,2%, under the CN code 0210.99.39, for other salted meat. Under CN code 0210, imports of frozen, boneless cuts of poultry with salt of 1,2% by weight from Brazil were subject to an *ad valorem* tariff rate of 15,4%.

Still prior to Regulation No. 1223/2002, frozen, boneless poultry cuts without salt were classified by the EC's customs authorities under CN code 0207.14.10. In fact, the description of the product under CN code 0207.14.10 did not provide for salt or its content. Imports of frozen, boneless poultry cuts without salt from Brazil, classified under this code, were subject to a tariff rate of 102,4 €/100kg/net.

Regulation No. 1223/2002 has included a new description of the product under CN code 0207.14.10. Goods under CN code 0207.14.10 are now 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". With Regulation No. 1223/2002 the EC has included salt as part of the description of the product under code 0207.14.10.

Regulation No. 1223/2002 automatically forces products that were previously imported under CN code 0210.99.39, and subject to an *ad valorem* tariff rate of 15,4%, to be classified under CN code 0207.14.10, and subject to a higher tariff rate of 102,4 €/100kg/net. This tariff rate of

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102,4 €/100kg/net is in excess of the tariff rate for salted meat (CN code 0210) provided for in the EC's Schedules under GATT 1994.

As a result of this measure, Brazil considers that its commerce has been accorded treatment less favorable than that provided in the EC Schedules, in contravention of the obligations of the EC under Articles II and XXVIII of the GATT 1994.

In addition, the application of this measure by the EC nullifies and impairs, within the meaning of GATT Article XXIII:1, benefits accruing to Brazil directly or indirectly under the GATT 1994.

The Government of Brazil reserves the right to raise additional factual or legal points related to the aforementioned measure during the course of consultations and looks forward to receiving in due course a reply to this request, in order to fix a mutually convenient date for the consultations.
