

EC – POULTRY¹

(DS69)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	<i>Brazil</i>	<i>GATT Arts. XIII, X Licensing Ag^a; AA Art. 5</i>	Establishment of Panel	<i>30 July 1997</i>
			Circulation of Panel Report	<i>12 March 1998</i>
Circulation of AB Report	<i>13 July 1998</i>			
Adoption	<i>23 July 1998</i>			
Respondent	<i>European Communities</i>			

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** European Communities' tariff rate quota (TRQ) system incorporated into EC Schedule LXXX with respect to frozen poultry and the European Communities' licensing requirements for importers of the product at issue.
- **Product at issue:** Frozen poultry imported from Brazil.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. XIII:2 (non-discriminatory administration of quantitative restrictions):** The Appellate Body upheld the Panel's finding that the TRQ must be administered on a non-discriminatory basis – as opposed to it being awarded exclusively to Brazil – based on the text of the EC Schedule LXXX and pursuant to Art. XIII, and thus, the European Communities had acted consistently with its WTO obligations. The Appellate Body also upheld the Panel's finding that, even when a TRQ is the result of an Art. XXVIII compensation negotiation, it must be administered in a non-discriminatory manner (total imports, including those from non-Members). The Appellate Body also agreed with the Panel that TRQ shares must be calculated on the basis of “total imports”, including imports coming from non-Members, and thus, the European Communities acted consistently with Art. XIII:2 by including imports from non-Members in its TRQ calculation.
- **GATT Art. X (publication and administration of trade regulation):** The Appellate Body upheld the Panel's finding that Art. X applies only to measures of “general application”, as opposed to specific transactions such as individual poultry shipments, and thus, Brazil's claims were outside the scope of Art. X.
- **AA Art. 5.1(b) (special safeguard mechanism – trigger price):** Having found that the special safeguard mechanism in AA Art. 5.1(b) is triggered when the CIF price *alone* (i.e. not including customs duties) falls below the reference or “trigger price”, the Appellate Body reversed the Panel and concluded that the European Communities had not violated the requirements of Art. 5.1(b). (Art. 5.5) The Appellate Body found that Art. 5.5 *mandates* the use of CIF import prices as the relevant price for calculating additional duty imposed under Art. 5.1(b). Thus, regarding the consistency of the EC Regulation, which provided for two methods for determining the amount of duty: one using the CIF price and one using an alternative “representative price” – the Appellate Body found that the Regulation was inconsistent with Art. 5.5.

3. OTHER ISSUES²

- **Dissenting opinion:** This was the first WTO dispute in which one member of a panel dissented from the majority opinion: In interpreting the “trigger price” under AA Art. 5.1(b), one panelist found that use of the CIF price alone met the requirements of Art. 5.1(b) (c.f. The Panel majority concluded that the trigger price was “CIF price plus customs duty”).

¹ *European Communities – Measures Affecting the Importation of Certain Poultry Products*

^a The Panel rejected all of Brazil's claims under *the Licensing Agreement*. Upon appeal by Brazil against some of these Panel's findings, the Appellate Body upheld the Panel's findings.

² Other issues addressed: scope of appellate review (DSU Art. 17.6); relevance of the 1994 Oilseeds Agreement; terms of reference.