

EC – CHICKEN CUTS¹

(DS269, 286)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	Brazil, Thailand	EC Schedule GATT Art. II:1	Establishment of Panel	7 November 2003 (Brazil) 21 November 2003 (Thailand)
			Circulation of Panel Report	30 May 2005
Respondent	European Communities		Circulation of AB Report	12 September 2005
			Adoption	27 September 2005

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** EC measures pertaining to the tariff reclassification from heading 02.10 (relating to, *inter alia*, salted chicken) to heading 02.07 (relating to, *inter alia*, frozen chicken) of certain frozen boneless chicken cuts impregnated with salt.
- **Product at issue:** Frozen boneless chicken cuts impregnated with salt, with a salt content of 1.2-3 per cent.

2. SUMMARY OF KEY PANEL/AB FINDINGS²

- **GATT Art. II:1 (schedules of concessions):** The Appellate Body upheld the Panel's ultimate finding that the EC measures (relating to tariff classification) imposed duties on the products at issue in excess of the relevant heading of the EC tariff commitment because under the EC Schedule, tariffs on frozen meat (02.07) are higher than on salted meat (02.10) and, thus, violated Arts. II:1(a) and (b).

Interpretation³ of the term at issue "salted" in EC Schedule

- **Ordinary meaning (VCLT Art. 31(1)):** The Appellate Body upheld the Panel's finding that "in essence, the ordinary meaning of the term 'salted' ... indicates that the character of a product has been altered through the addition of salt" and that "there is nothing in the range of meanings comprising the ordinary meaning of the term 'salted' that indicates that chicken to which salt has been added is not covered by the concession contained in heading 02.10 of the EC Schedule".
- **Context (VCLT Art. 31(2)):** Having considered relevant context including explanatory notes to the EC schedule and the Harmonized System for Tariff Classification for the interpretation of the term "salted", the Appellate Body upheld the Panel's finding that the term "salted" in the relevant EC tariff commitment was not necessarily characterized by the notion of long-term preservation as argued by the European Communities, but rather encompassed both concepts, i.e. "preparation" and "preservation" by the addition of salt.
- **Subsequent practice (VCLT 31(3)(b)):** The Appellate Body, reversing the Panel's interpretation and application of the concept "subsequent practice" within the meaning of Art. 31(3)(b), provided its own interpretation of "subsequent practice" to the extent that the importing Member's practice alone could not constitute "subsequent practice". Consequently, it reversed the Panel's conclusion that the EC practice of classifying the products at issue under heading 02.10 between 1996 and 2002 amounted to "subsequent practice" within the meaning of VCLT 31(3)(b).
- **Circumstances of conclusion (VCLT 32):** The Appellate Body upheld the Panel's conclusion that the supplementary means of interpretation considered under VCLT Art. 32 (including circumstances of conclusion at the time of tariff negotiations, such as European Communities' legislation on customs classification, the relevant judgments of the European Court of Justice and EC classification practice) confirmed that the products at issue were covered by the tariff commitment under heading 02.10 of the EC Schedule.

¹ *European Communities – Customs Classification of Frozen Boneless Chicken Cuts*

² Other issues addressed: measures and products within terms of reference; executive summaries of submissions (panel working procedures, para. 12); separate panel reports; jurisdiction of the World Customs Organization (DSU Art. 13.1 – expert consultation).

³ In this case, both the Panel and the Appellate Body provided detailed analyses on treaty (EC Schedule) interpretation pursuant to the customary rules of treaty interpretation embodied in the VCLT Arts. 31 and 32.