

## XII. Findings and Conclusions

347. For the reasons set forth in this Report, the Appellate Body:

- (a) regarding the terms of reference:
  - (i) upholds the Panel's finding, in paragraph 7.37 of the Panel Reports, that the Panel's terms of reference do not include EC Regulation 1871/2003 and EC Regulation 2344/2003;
  - (ii) upholds the Panel's finding, in paragraph 7.37 of the Panel Reports, that the products covered by the Panel's terms of reference are those covered by the specific measures at issue, namely, frozen boneless chicken cuts impregnated with salt, with a salt content of 1.2 to 3 per cent;
- (b) regarding the interpretation of the term "salted" in the tariff commitment under heading 02.10 of the EC Schedule in the light of Articles 31 and 32 of the *Vienna Convention*:
  - (i) upholds the Panel's conclusion, in paragraph 7.150 of the Panel Reports, that "the ordinary meaning of the term 'salted' when considered in its factual context indicates that the character of a product has been altered through the addition of salt", and upholds the Panel's conclusion, in paragraph 7.151 of the Panel Reports, 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";
  - (ii) finds that the term "salted", in heading 02.10 of the Harmonized System, does not contain a requirement that salting must, by itself, ensure "preservation"; and consequently, upholds the Panel's finding, in paragraphs 7.245 and 7.331(c) of the Panel Reports, that the context of the term "salted" in the tariff commitment under heading 02.10 of the EC Schedule "indicates that that concession is not necessarily characterized by the notion of long-term preservation", and finds that the scope of that tariff commitment is not limited to products salted provided that it ensures long-term preservation;

- (iii) upholds the Panel's conclusion, in paragraph 7.328 of the Panel Reports, that "the lack of certainty associated with the application of the criterion of long-term preservation with respect to the concession contained in heading 02.10 of the EC Schedule ... could undermine the object and purpose of security and predictability, which lie at the heart of both the WTO Agreement and the GATT 1994";
  - (iv) reverses the Panel's interpretation and application of the concept of "subsequent practice" within the meaning of Article 31(3)(b) of the *Vienna Convention*; and consequently, reverses the Panel's conclusions, in paragraphs 7.289-7.290 and 7.303 of the Panel Reports, that the European Communities' practice of classifying, between 1996 and 2002, the products at issue under heading 02.10 of the EC Schedule "amounts to subsequent practice" within the meaning of Article 31(3)(b) of the *Vienna Convention*;
  - (v) modifies certain aspects of the Panel's interpretation of the concept of "circumstances of [a treaty's] conclusion" within the meaning of Article 32 of the *Vienna Convention*; but upholds the Panel's conclusion, in paragraph 7.423 of the Panel Reports, that the supplementary means of interpretation considered under Article 32 confirm that the products at issue are covered by the tariff commitment under heading 02.10 of the EC Schedule; and consequently
- (c) upholds the Panel's findings, in paragraphs 7.424 and 8.1 of the Panel Reports, that:
- (i) frozen boneless chicken cuts that have been impregnated with salt, with a salt content of 1.2 to 3 per cent (the products at issue) are covered by the tariff commitment under heading 02.10 of the EC Schedule;
  - (ii) EC Regulation 1223/2002 and EC Decision 2003/97/EC result in the imposition of customs duties on the products at issue that are in excess of the duties provided for in respect of the tariff commitment under heading 02.10 of the EC Schedule; and
  - (iii) accordingly, that the European Communities has acted inconsistently with the requirements of Articles II:1(a) and II:1(b) of the GATT 1994 and, thus, nullified or impaired benefits accruing to Brazil and Thailand; and

(d) finds that the Panel complied with its obligations under Article 11 of the DSU.

348. The Appellate Body recommends that the Dispute Settlement Body request the European Communities to bring its measures, found in this Report and in the Panel Report as modified by this Report to be inconsistent with the *General Agreement on Tariff and Trade 1994*, into conformity with its obligations under that Agreement.

Signed in the original in Geneva this 27th day of August 2005 by:

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Giorgio Sacerdoti  
Presiding Member

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Luiz Olavo Baptista  
Member

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A.V. Ganesan  
Member